

1 IN THE UNITED STATES DISTRICT COURT.
2 FOR THE DISTRICT OF NEW JERSEY
3 CIVIL 02-2917 (JEI)

4 PATRICK BRADY, SALLY YOUNG,
5 HOWARD HOLLANDER, THEODORE CASE,
6 AND MICHAEL FINUCAN, individually
7 and on behalf of all others
8 similarly situated,
9 Plaintiffs,

10 V.

VOLUME 12
TRIAL TRANSCRIPT

11 AIR LINE PILOTS ASSOCIATION,
12 Defendant.

CAMDEN, NEW JERSEY
JUNE 28, 2011

13 B E F O R E: HONORABLE JOSEPH E. IRENAS
14 UNITED STATES DISTRICT JUDGE

15 A P P E A R A N C E S:

16 TRUJILLO, RODRIGUEZ & RICHARD
17 BY: NICOLE M. ACCHIONE, ESQ.
18 AND: LISA J. RODRIGUEZ, ESQ.
19 AND
20 GREEN JACOBSON, P.C.
21 BY: ALLEN PRESS, ESQ. (MO. BAR)
22 AND: JOE D. JACOBSON, ESQ. (MO. BAR)
23 For the Plaintiffs.

24 ARCHER GREINER
25 BY: STEVEN FRAM, ESQ.
AND
KATZ & RANZMAN
BY: DANIEL M. KATZ, ESQ.
FOR THE DEFENDANT AIR LINE PILOTS ASSOCIATION.

ELIZABETH GINSBURG, ESQ.
IN-HOUSE COUNSEL FOR ALPA.

1 Pursuant to Section 753 Title 28 United States
2 Code, the following transcript is certified to be an
3 accurate record as taken stenographically in the
4 above-entitled proceedings.

5 S/ LYNNE JOHNSON

6 Lynne Johnson, CSR, CM, CRR
7 Official Court Reporter
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17 LYNNE JOHNSON, CSR, CM, CRR
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25

1 DUANE WOERTH, previously sworn, resumes.

2 CONTINUED CROSS EXAMINATION.

3 BY MR. JACOBSON:

4 (The jury enters the courtroom.)

5 THE COURT: Good morning, everybody. Please be
6 seated.

7 THE COURT: Mr. Jacobson, I recognize you to
8 continue your cross examination.

9 MR. JACOBSON: Thank you, your Honor.

10 Q. Mr. Woerth, at ALPA's offices, among the 500 employees,
11 approximately, you have working for the union there is a
12 group devoted to communications. Correct?

13 A. Yes.

14 Q. And they maintain, among other things, a website for
15 you?

16 A. Yes.

17 Q. And they help issue press releases that are issued out
18 to the public?

19 A. Of course.

20 Q. All right. And the press releases in fact are recorded
21 on the website so anyone who wants to can go back and see the
22 press releases you have issued over the years at least back
23 as far as the year 2000. Correct?

24 A. I would hope so.

25 Q. And the intent of these press releases is to be

1 accurate, correct?

2 A. Of course.

3 Q. Truthful?

4 A. Yes.

5 Q. And you are frequently quoted in press release /-S from
6 the time that were issued during the time when you were
7 present. Correct?

8 A. I am sure I was.

9 Q. And when you are quoted you want to make sure that the
10 quotes accurately reflect what you say?

11 A. Sure.

12 Q. All right. Now, there has been testimony in this case
13 about what is called a called 1113 motion in bankruptcy
14 court. Are you familiar with that, sir?

15 A. Yes.

16 Q. And 1113 motion is a motion filed under a particular
17 section of the Bankruptcy Code that deals with collective
18 bargaining agreements?

19 A. That's correct.

20 Q. All right. And prior to 1113 being enacted, collective
21 bargaining agreements were treated like every other contract,
22 abrupt company might wish to get out of, correct?

23 A. Yes.

24 Q. And there was a very bad experience that pilots and
25 other unions had at the hands of Frank Lorenzo at Continental

1 Airways, correct?

2 A. Yes.

3 Q. As a result you together with the AFL- CIO went to
4 Congress and you got the 1113?

5 A. Actually that was President Duffy in the eighties but
6 the union did, that's right.

7 Q. ALPA got the 1113 as additional protection for pilots
8 and other union employees who had collective bargaining
9 agreements?

10 A. That was our goal.

11 Q. All right. Now, you know that in this case, a 1113 had
12 been filed by TWA to try to abrogate the TWA pilots'
13 contract, their collective bargaining agreement?

14 A. Yes.

15 Q. All right. Now, isn't it a fact that as late as April
16 10 of 2006, while you were still president of APA, that no
17 bankruptcy court had ever abrogated a Railway Labor Act
18 collective bargaining agreement.

19 MR. KATZ: I am going to object, your Honor. It is
20 irrelevant. Anything that happened in 2006 is irrelevant to
21 the facts of this case, as well, there is no foundation for
22 this witness to be an expert on the legal aspects of 1113.

23 THE COURT: Well, I don't know you have to be a
24 legal expert to answer the question but I think you are
25 correct. What happened in 2003, 4, 5 and 6 is really

1 irrelevant.

2 MR. JACOBSON: Your Honor, it is relevant to what
3 the state of mind of ALPA's advisors are in 2001.

4 THE COURT: The state of mind in 2001 couldn't be
5 influenced by what happened in 2004.

6 MR. KATZ: Precisely.

7 MR. JACOBSON: But it could be influential if it
8 never happened until 2006.

9 THE COURT: Why don't you ask the question, up to
10 April 6 of 2001.

11 MR. JACOBSON: All right.

12 Q. As of April 6 of 2001, isn't it a fact that no 1113
13 motion filed to set aside or abrogate any collective
14 bargaining agreement under the Railway Labor Act had ever
15 been granted by a bankruptcy court?

16 A. That may be true. I don't know. But there was almost
17 no bankruptcies, so I doubt if there were many opportunities
18 for it to be tested.

19 Q. You don't know.

20 A. I don't know.

21 Q. You don't recall as of that date whether or not any had
22 ever been abrogated?

23 A. I am going, I probably think there were not. I think
24 there was only a couple of bankruptcies between the mid
25 eighties and 2001. There were very few bankruptcies in the

1 nineties, if any. You are probably right but I do not know.

2 Q. Let me give you something which may refresh your
3 recollection as to whether or not this is true, the statement
4 I made to you. I am marking this document as plaintiff's
5 exhibit 441? Do you have that document?

6 A. Yes.

7 Q. This is a press release issued by the union you headed
8 at that time?

9 A. From April 10, 2006.

10 Q. Correct.

11 A. Yes.

12 Q. And this is the press release from ALPA news?

13 MR. KATZ: I object to any questioning using this
14 document for the same reasons.

15 THE COURT: No, I am going to allow this. Go
16 ahead. First of all, are you offering it or not.

17 MR. JACOBSON: Not yet. I haven't got him to
18 identify it. He is the president at the time. I want to
19 make sure he can identify items that look like his press
20 releases.

21 A. This looks like a press release from ALPA. I was
22 certainly president at the time.

23 Q. Do you see the bottom, the url showing from the website
24 ALPA dot org?

25 A. Yes.

1 Q. That is the website for the union you headed?

2 A. Yes.

3 Q. Second-to-last paragraph, the one above the history of
4 ALPA paragraph?

5 A. The second to last?

6 Q. Yes, sir.

7 A. Yes.

8 Q. Read that?

9 A. Since the adoption of Section 1113 legislation no
10 contract governed by the Railway Labor Act has been rejected
11 through bankruptcy.

12 Q. Does that refresh your recollection that as of April 2,
13 or April 6 of 2001, that no Railway Labor Act contract had
14 been abrogated under Section 1113?

15 A. I am hoping this is true because I said it so that must
16 have been right when the communications and legal guys
17 drafted it up so I am assuming that is right.

18 Q. Thank you.

19 MR. JACOBSON: I would like to offer 441 in
20 evidence.

21 MR. KATZ: I object. Something from 2006 is
22 irrelevant, your Honor. He can use it to try to refresh the
23 witness's recollection but I don't think it is admissible as
24 an exhibit in the case under Rule 803(5).

25 THE COURT: I am going to let it in.

1 THE COURT: It is an official document issued by
2 ALPA the defendant makes a statement, a very affirmative
3 factual statement concerning 1113. I am going to let it in.

4 MR. JACOBSON: Thank you, your Honor.

5 Q. Mr. Woerth, if you look at the first paragraph of this
6 press release, it is regarding a potential strike with the
7 Delta pilots.

8 A. Yes.

9 Q. And it states that ALPA has given final approval for a
10 \$10 million grant from the major contingency fund to help
11 fund that strike if it should happen?

12 A. Yes.

13 Q. All right. Thank you.

14 Q. Now, we have talked a lot about the major contingency
15 fund and I want to ask you, is it a fact that the major
16 contingency fund is something that was established in roughly
17 1986 by ALPA.

18 A. I think the, I think in '85 or '86, after the United
19 strike, yes.

20 Q. And it was because of the United strike and the need to
21 be able to bring resources to bear in advance of an action
22 that you developed this particular fund, correct?

23 A. Strikes are very expensive proposition.

24 Q. And it is used not just for strikes. It was also used
25 to help support contract negotiations that are extensive in

1 length?

2 A. That is not an accurate statement.

3 Q. That is not an accurate statement?

4 A. The purposes of the major contingency fund cannot be
5 used for normal operations, and contract negotiations are
6 normal operations. For just negotiating the contract you
7 don't get an MCF account.

8 Q. If it is a contract that extends over an extended period
9 and goes into NMB mediation and the rest of it, isn't it a
10 fact that ALPA does give major contingency fund financing to
11 those type of negotiations?

12 A. As we already testified and you asked me for special
13 projects relating to strike preparations, not negotiations.
14 If they are going to prepare for a strike they will probably
15 be granted an MCF. It has to be a grant related to a strike.
16 Not normal contract negotiations or merger.

17 Q. All right. I understand your answer.

18 Q. Now, with 1113 hearing, you had to go through a few of
19 those as president of ALPA in the 1990s -- in the 2000s,
20 correct?

21 A. Well, the union did. I never participated in any Court
22 proceeding.

23 Q. You never participated in a court proceeding?

24 A. Not for 1113.

25 Q. Are you familiar with the process or not?

1 A. From my vantage point of the president of a union but
2 not as an attorney.

3 Q. From your vantage point as the president of the union,
4 do you understand that the date that is set for the hearing
5 is the date that everything happens, or that in fact you have
6 extended hearings where you present evidence over the course
7 sometimes of weeks or months?

8 A. My understanding of the Court, it is in the hands of the
9 a Judge. A lot things can happen when the Judge wants them
10 to happen.

11 Q. You participated in the Mesaba 1113 motions and
12 arguments?

13 A. I was never in a court, know.

14 Q. You were outside the Court, you made speeches about it,
15 didn't you, sir?

16 A. I made speeches to my pilots and to the press to
17 encourage the right outcome in the media. In the community.

18 Q. And the hearing took months, didn't it?

19 A. Yes.

20 Q. From the time it started until the time there was a
21 final decision?

22 A. I sbelieve it did.

23 Q. So it is not simply, for example, in the TWA case, April
24 6 is the date that the motion is joined, and you have to be
25 done by then because the Court will decide on that day?

1 A. It seems like everything depends on the circumstances,
2 and the Judge.

3 Q. All right. That is a fair statement.

4 Now, in this particular situation, the TWA
5 situation, ALPA pledged to the TWA pilots its moral support,
6 and such financial resources as maybe reasonable under
7 various things, correct.

8 A. I think the language says as was necessary.

9 Q. As was necessary. There are higher degrees of support
10 that ALPA gives to MECs and, from time to time, isn't there?

11 A. I didn't hear your question.

12 Q. I am sorry. There are higher degrees of support,
13 support beyond simply moral support that ALPA gives to its
14 member units when needed?

15 A. We meet the requests, we make evaluation upon requests
16 besides the normal budgets and evaluate them, sometimes they
17 are more, sometimes they are less.

18 Q. All right. In fact sometimes ALPA will pledge, quote,
19 all its resources, close quote, to an MEC that is facing a
20 situation. Isn't that right?

21 A. I don't think that happened under my watch. I am sure
22 it happened sometimes.

23 Q. But you were president of ALPA until when?

24 A. 2006.

25 Q. What month, what year?

1 A. December, 2006.

2 Q. December, 2006. I am going to give you a document I
3 have marked as exhibit 442. This is another press release
4 from ALPA?

5 MR. KATZ: Your Honor, I am going to object to any
6 questioning about this document. It is July, 2006. It
7 relates to event that occurred long after the events in this
8 case.

9 THE COURT: Let me look at it.

10 MR. JACOBSON: Your Honor, I direct your attention
11 to the fifth paragraph in particular.

12 THE COURT: What is this being offered for?

13 MR. JACOBSON: Your Honor, he just stated that he
14 had never pledged all its resources to a unit during the time
15 he was president and here they are pledge go all their
16 resources to the Mesaba pilots while he is present.

17 THE COURT: You can question on that.

18 Q. Mr. Woerth, I direct your attention to the fifth
19 paragraph of this letter. Of the press release, excuse me?

20 A. Yes.

21 Q. This is a press release issued at the time you are
22 president?

23 A. Yes.

24 Q. Your six months from the end of your term at this
25 point?

1 A. Yes.

2 Q. And what does the first line of paragraph 5 say?

3 A. This line is not a pledge from ALPA, it is not a pledge
4 from a governing body. It is not a statement. It is, it is
5 not a resolution. It is a press release that says, I will
6 read what it says, it has no governing body authority. The
7 press release says ALPA's national leadership has pledged all
8 of its resources to support the Mesaba pilots in this
9 dispute. But it is not backed up by a single resolution or
10 anything of authority of ALPA.

11 Q. Did ALPA pass a resolution to that effect?

12 A. No, it did not.

13 Q. You are telling?

14 A. The words all, we never passed a resolution with the
15 word all.

16 Q. You have never passed a resolution saying all of your
17 resources?

18 A. I am not aware of one. I don't remember one.

19 Q. All right. Now, in the Mesaba case, was ALPA willing to
20 shut the airline down and all the jobs if they weren't able
21 to get a contract that would be acceptable to the union?

22 MR. KATZ: Objection, your Honor. The Mesaba case
23 is not what this lawsuit is about. The present lawsuit is
24 about the TWA case.

25 THE COURT: The Mesaba case, even according do the

1 press release, had tons of money. They were subrogated to a
2 parent company. TWA had no money. It certainly was not in a
3 position to upstream anything to anybody. This to me looks
4 like a different kettle of fish. I let the you ask the
5 question on pledging all the resources. But to start getting
6 into the facts of this bankruptcy that took place five years
7 later, and clearly is a different set of facts. I am not
8 going to allow that.

9 MR. JACOBSON: Your Honor, may I approach sidebar on
10 this for a second?

11 THE COURT: Sure.

12 (At sidebar)

13
14 MR. JACOBSON: Your Honor, the purpose of this --
15 you want the noise on?

16 THE COURT: What?

17 THE COURT: We have a white noise button.

18 MR. JACOBSON: Your Honor, the defendants in their
19 defense state that there are limits on their ability to apply
20 pressure in this case because of the fear that it would
21 somehow cause TWA to liquidate or be closed down or something
22 along those lines. And what I would like to show on part of
23 my cross examination of this witness is that when an issue
24 deals with something that ALPA considers to be a fundamental
25 issue of the type of the contracts and rights to protect

1 their pilots, they are in fact willing to, in the words of
2 one ALPA present president, burn the airline down to get it.

3 They did that with Eastern Airlines and they were
4 going to do it with Mesaba I want to show that that is the
5 kind of leverage and press that a tough union brings to the
6 table when they need to.

7 THE COURT: Well, I don't, this is a 2006 event.
8 The company is totally different, by their own press
9 releases, apparently the charge here was they up streamed
10 tons of money so the notion that the airline, or its intent,
11 this to me is confusing to the jury. When they come out,
12 about strikes generally, or policy before 2001, Eastern
13 occurred before 2001 Not the Mesaba. That is a Mesaba
14 situation, it occurred five years later.

15 MR. JACOBSON: I understand, your Honor.

16 THE COURT: Okay.

17 THE COURT: Eastern may be a different story.

18 (In open court)

19 BY MR. JACOBSON:

20 Q. Mr. Woerth, do you still have in front of you the
21 exhibits you were shown by your lawyer yesterday?

22 A. No.

23 Q. All right. Then we will just project this on the
24 screen, if we could. Will, exhibit D 159. Go to the first
25 page, we will identify it.

1 Can you see that this is a resolution of the
2 executive board, May 22 through 24, 2001, of the Air Line
3 Pilots Association.

4 A. Yes.

5 Q. And this relates to support for the TWA MEC?

6 A. Yes.

7 Q. Let's go to the last page of this document. Do you
8 recall that in your direct testimony, that you indicated that
9 this resolution dealt with a request by the TWA MEC for a
10 million dollars, and that ALPA gave them the million dollars.
11 Do you recall that, sir?

12 A. I believe I do.

13 Q. All right. Can you look at this and tell me where in
14 this resolution, anywhere, the TWA MEC is given any money
15 whatsoever by ALPA?

16 A. I was mistaken. This is a different resolution and my
17 testimony now, it just refers to a million dollars that was,
18 it was not a request. I was in error.

19 Q. It refers to the fact that TWA had in their contract?

20 A. Yes.

21 Q. With TWA, a 9,000 hour flight loss bank that was at the
22 discretion of the TWA master chairman. Right?

23 A. That's correct. I should have reviewed the resolution
24 more before my testimony.

25 Q. So saying that they are having a somewhat financial

1 tough time now because they have lost approximately a million
2 dollars a year that they had available for their union
3 activities?

4 A. That appears to be correct, yes.

5 Q. And then therefore be resolved paragraph at the end,
6 there is where you pledge the full moral support of the
7 association, right, an along with necessary funding in
8 accordance with current ALPA policies and the ALPA
9 Constitution and bylaws. Correct?

10 A. That's correct.

11 Q. And you testified yesterday, you agreed yesterday, that
12 neither in 2000, nor in 2001, nor in 2002, did TWA receive
13 any of the contingency fund money?

14 A. It wasn't necessary.

15 Q. All they received was a loan of approximately a quarter
16 million dollars from the operating contingency fund, correct?

17 A. It was a grant from the operations fund.

18 Q. Operating contingency fund money is supposed to be
19 repaid, right?

20 A. It is supposed to be repaid.

21 Q. This was repaid in fact out of the bankruptcy, wasn't
22 it?

23 A. I don't know the outcome. I hope it was.

24 Q. Can we turn to exhibit D 160 which you were shown
25 yesterday as well. Look at the top. This is again another

1 ALPA executive council resolution?

2 A. Yes.

3 Q. This is from September 24 through September 28?

4 A. Yes.

5 Q. And this is a resolution regarding the TWA MEC's desire
6 to employ Roland Wilder in connection with grievance and
7 possible litigation off of the grievance, correct?

8 A. Yes.

9 Q. You testified about this yesterday.

10 A. Yes.

11 Q. And yesterday you said that ALPA gave the TWA MEC money
12 in approving this resolution?

13 A. I think the correct answer is they were going to use
14 their funds.

15 Q. All right. It wasn't any new money from ALPA?

16 A. I don't think there was any new money.

17 Q. It was TWA MEC's fund?

18 A. Correct.

19 Q. Okay. Turn now if you would to exhibit D 158. That is
20 another resolution of the ALPA Executive Council, correct?

21 A. Yes.

22 Q. This one is from May 21 of 2001?

23 A. Yes.

24 Q. And this is their request about engaging outside
25 negotiation consultant, Mr. Baehler?

1 A. Yes.

2 Q. You recall that yesterday you testified that ALPA gave
3 the TWA MEC permission to hire him and paid for Mr. Baehler.
4 Do you recall saying that?

5 A. I recall saying that he was, permission to hire.

6 Q. Do you recall saying you paid for it as well?

7 A. I don't recall but I wouldn't be surprised. I might
8 have made an error.

9 Q. But in fact this is being paid out of TWA MEC's money?

10 A. Yes, it is.

11 Q. Not any new funds from ALPA?

12 A. That's correct.

13 Q. Turn if you would to exhibit D 50. Turn to the second
14 page of it, if you would. This is a letter addressed to Bob
15 Pastore, the TWA MEC chairman?

16 A. Yes.

17 Q. Do you see that, sir?

18 A. I have to use the cheater here unless they can blow it
19 up a little bit.

20 Q. That is August 29, 2001.

21 A. Yes.

22 Q. Somewhat late in the whole history of this transaction.
23 Correct, sir?

24 A. Yes.

25 Q. If you look at the third paragraph of this letter, it

1 says that executive council approved subject to the approval
2 of the executive board \$251,94040 in supplemental funding
3 from the operating contingency fund to bring your MEC's
4 account up to the required 90 level as of June 1, 2001.

5 Do you see that, sir?

6 A. Yes.

7 Q. Isn't it a fact that this roughly quarter of a million
8 dollars was the only additional funds provided to the TWA MEC
9 by ALPA throughout the entire TWA American merger
10 negotiations, and transition?

11 A. I think that's correct. Everything we requested they
12 had enough funds to pay for it in their budget.

13 Q. You agree this is the only supplemental funds that ALPA
14 provided?

15 A. I think that's right.

16 Q. These are the funds that are supposed to be repaid?

17 A. I believe so.

18 Q. All right.

19 Q. In fact, all the things that ALPA approved to TWA MEC to
20 do, to the extent that you approve things, if there were
21 costs involved the TWA MEC paid those costs?

22 A. Yes.

23 MR. KATZ: I am going to object to that
24 characterization, your Honor.

25 MR. JACOBSON: It is already answered.

1 THE COURT: He didn't have a problem witness. I am
2 going to let it stand. If you want to clarify it, you can do
3 it on redirect.

4 MR. KATZ: Thank you, your Honor.

5 Q. Now, collective bargaining agreements are supposed to be
6 negotiated between, by the MEC, through its negotiating
7 committee or with the employee subject to your ultimate
8 approval. Correct, sir?

9 A. I think that is generally correct, yes.

10 Q. And before you exercise your ultimate approval you have
11 lawyers and in-house negotiators review the documents to
12 ensure that it complies with ALPA policy and the goals that
13 the association has for the improvement of the statute and
14 status of pilots?

15 A. Yes.

16 Q. All right. But the key thing, part of the Independence
17 Plus that you talked about yesterday, is that the local MEC
18 is the one that is supposed to be negotiating. Correct?

19 A. Well, sure.

20 Q. All right. And if they want to make a concession of
21 some sort, it has to originate from them, not from, it
22 shouldn't be forced upon them by someone else?

23 A. Well, they will make the decision. I am not sure of the
24 characterization of being forced.

25 Q. Let me rephrase it. Would you agree that it would not

1 be proper for an ALPA staff member to, on his own, negotiate
2 the terms of the collective bargaining agreement with the
3 employer without keeping the MEC or the MEC's negotiating
4 committee in the loop about what is being negotiated?

5 A. I wouldn't approve of that.

6 Q. That would be improper, wouldn't it?

7 A. I can't imagine that happened, but I wouldn't approve of
8 it as it is.

9 Q. All right. Would that be inconsistent with ALPA's
10 Constitution and operating procedures, or staff, for a staff
11 member to go off on his own and negotiate concession Oz
12 behalf of the MEC?

13 A. I don't think it is written in our Constitution or
14 anybody's Constitution, but normally, you involve the entire
15 negotiating committee, not just staff by itself, although
16 there are sidebars between, this happens very frequently when
17 the attorney from the company wants to meet with the attorney
18 or the lead, a staff negotiator on the side and have a
19 sidebar conversation.

20 That happens very frequently, but only, when only
21 attorneys are involved or advisors are involved, that happens
22 all the time.

23 Q. Right. But that is in the negotiation session while the
24 negotiators are there?

25 A. The negotiators usually know what is happening, of

1 course.

2 Q. Right. You do it out of their sight and out of their
3 hearing and without their knowledge, that would not be at all
4 typical, right?

5 A. Without their knowledge or reporting, I think I wouldn't
6 approve of that.

7 Q. In fact, that would be so unusual that for an ALPA
8 employee to go off on his own and negotiate the terms of
9 collective bargaining agreement on behalf of an MEC without
10 involving MEC, that would be an arbitrary action, wouldn't
11 it, sir?

12 MR. KATZ: I am going to object. It calls for a
13 legal conclusion. There is no evidence in the record that
14 anything like that ever happened.

15 THE COURT: Did you understand the question?

16 A. I understand the question. I don't understand its
17 theoretical relevance, if nothing happened.

18 THE COURT: Rephrase the question. Reframe it.

19 Q. All right.

20 Mr. Woerth, there has been testimony in this case
21 that between the point, the last point the negotiating
22 committee was involved, they had a two- or three-page term
23 sheet with some bullet points and then appeared later a full
24 blown collective bargaining agreement, many, many pages,
25 what, 72 pages, in length, with all sorts of provisions in

1 it, never before seen by negotiating committee, appeared in
2 the hands of the master chairman, Bob Pastore, for signature,
3 without the negotiating committee having been involved
4 anywhere between these two documents. You weren't here for
5 it.

6 I am just telling you that is what the testimony
7 was. You very well might disagree with that, sir.

8 THE COURT: These are negotiations with TWA LLC.

9 MR. JACOBSON: Yes, your Honor. This WAS the
10 negotiations that were testified to by Mr. Day, and Sean
11 Clarke.

12 MR. KATZ: I am going to object to the question,
13 your Honor. He is referring to a document that was signed
14 Byram Kiel, the chairman of the TWA pilots MEC negotiating
15 committee.

16 THE COURT: I don't think that is his question, who
17 signed it. I think the question is -- I am not --

18 Q. The question is, the testimony is it went from a small,
19 a short set of bullet points to a full-flung document who
20 without involving the committee. Would that kind of activity
21 be consistent in your view in how ALPA operates in
22 negotiating collective bargaining agreements with airlines?

23 A. Sir, what you just ask described to me sounds normal.
24 You have bullet points, and what is going to happen, lawyers,
25 not the pilots, go back and draft up language. So if lawyers

1 and advisors drafted up language and finally presented it,
2 you don't have to agree to it. If you don't like it, you can
3 amend it, can you discard it, you can vote against it but it
4 is not unusual for attorneys to draft the language, not for
5 pilots. That is very normal, actually.

6 Q. Would it be normal to have a termination date rather
7 than an amendable date without first discussing that with the
8 pilots?

9 A. It is probably a thousand things you can put if in but
10 if they didn't like it, they could change it. The attorneys
11 can't agree to anything or make a contract. Only the pilots
12 can make a contract.

13 Q. Do you remember the Comair pilots and their strike?

14 A. Yes.

15 Q. That was taking place at about the same time as the TWA
16 American merger negotiations, correct?

17 A. It began in March of 2001, and I think ended in June.

18 Q. And in fact you testified on direct examination that the
19 Comair strike was the most important thing happening in your
20 union world at that time period?

21 A. That was the one that had the most risk and downside for
22 the pilots.

23 Q. How many pilots were there at Comair?

24 A. I am thinking about 1,500. I am not sure.

25 Q. All right. So something about 60 or 70 percent of the

1 size of the TWA group.

2 A. Yes.

3 Q. Now, what are strike preparation costs?

4 A. Well, they vary, of course, between the size of the
5 airline and --

6 Q. I am sorry. My question wasn't clear. I am not talking
7 about a dollar amount. What type of things are involved in
8 strike preparation that would be a cost that would be funded
9 by a major contingency fund grant?

10 A. Normally the highest cost for strike preparation is
11 really flight pay loss which is usually the highest cost of
12 association other than employees of our employees for having
13 we do. Strike preparation usually involves very large teams
14 of strike coordinators, you rent office facilities, you make
15 videos, you have strike coordinators. There is an awful lot
16 of manpower so depending on how much the pilots are paid, is
17 how much flight loss pay loss, but it is a very large team,
18 sometimes hundreds of pilots are directly involved with with
19 the active strike leaders, if it came to pass.

20 Q. Is that an appropriate major contingency fund
21 expenditure in your view?

22 A. That is what our definition of major contingency fund
23 defines it as, so yes.

24 Q. So let me show you what I have marked as exhibit 443.

25 This is another press release from your

1 association. Mr. Woerth, do you recognize this as a March 7,
2 2001, press release of ALPA.

3 A. Yes.

4 Q. You are in fact quoted in this press release, third
5 paragraph.

6 A. I see that.

7 Q. Also quoted again in the fourth paragraph?

8 A. Yes.

9 Q. Is that true, sir?

10 A. Give me a moment to read it. Looks like it.

11 A. Yes.

12 MR. JACOBSON: I will offer exhibit 443 in evidence,
13 your HOnor.

14 MR. KATZ: No objection.

15 THE COURT: Okay. It is in evidence.

16 Q. Now, looking at the first two paragraphs of the
17 document. All right. The association, ALPA, provided the
18 pilots at Comair approximately \$2 million in major
19 contingency funds at that point in time for strike
20 preparation, correct?

21 A. Yes.

22 Q. And would it din to pay about \$2 million per month in
23 strike benefits if the strike in fact took place?

24 A. By our policies, yes.

25 Q. By your policies. And you in the third paragraph, you

1 are quoted as saying, you say, we have pledged our full
2 support to the Comair pilots to do our ultimate most for them
3 in their efforts to a chief a fair and equitable contract.

4 Is that right, sir?

5 A. Sure.

6 Q. And if you go down to the fourth paragraph, you are
7 quoted as saying, and if a strike occurs I will ensure that
8 additional funds from our more than 70 million dollars war
9 chest will be available to support our Comair pilots. Do you
10 see that, sir?

11 A. Sure.

12 Q. All right. But you didn't provide any major contingency
13 funds to TWA pilots to help them in their battle for
14 seniority?

15 A. Two completely different things. If they were eligible
16 for major contingency fund, they could have applied and the
17 executive board would have made that determination. The
18 mergers aren't normally a strike.

19 Q. You agree that seniority is more important than any
20 particular term of a contract, you said yesterday seniority
21 is forever.

22 A. And a strike can be forever, too.

23 Q. In fact you joined the picket line for the Comair
24 strike, didn't you, sir?

25 A. Of course I did.

1 Q. And your issue with Comair was that the proposed
2 contract would in fact perpetuate a system of two
3 distinct classes of pilots, pilots who are main line pilots,
4 who are relatively well paid and pilots who are regional
5 pilots who are always at the bottom of the pecking order,
6 correct?

7 A. There are, you are correct in saying the strike was
8 important to more than Comair. There is almost 25,000
9 regional pilots who barely make a living wage, and this was a
10 strike to affect more than Comair pilots, to raise regional
11 pilot pays past the living wage for 25,000 pilots. This was
12 a very important strike to win.

13 Q. I am not disputing the points of the strike. If I
14 understand correctly, I think you agree with me is that the
15 issue there was to try to prevent, to roll back, in a sense
16 the attempt to split the pilots between the haves and the
17 have nots, those in the top who get reasonably decent pay and
18 reasonably good living conditions and those at the bottom,
19 the regional pilots, who get neither. Is that a fair
20 statement?

21 A. I think it is more simple than that. We are trying to
22 get the pay rate up for Comair. We weren't having a class
23 warfare. We were trying to raise their pay which we hoped
24 raised up the pay of other pilots.

25 Q. Right. You are trying to eliminate the class warfare

1 that management put in of trying to treat regional pilots as
2 second class citizens in the aviation world.

3 A. We were trying to raise their pay and make them what
4 they are worth, which is a lot more than they are getting
5 paid, yes.

6 Q. You are trying to eliminate this thing from keeping them
7 on the bottom?

8 A. What was keeping them on the bottom was poor contracts.
9 We were trying to improve the contracts.

10 Q. And similar to the TWA pilots are in a situation where
11 most of them are going to be kept on the bottom of the
12 seniority list, correct?

13 A. They are going to be kept -- wherever seniority ended
14 up, but they were going to be some of the best paid pilots in
15 the country when they became American pilots.

16 Q. The group that would be stapled would be on the bottom
17 of the seniority list, correct? Is that correct?

18 A. I thought you said that aren't be stapled to the
19 botton..

20 Q. The ones that would be stapled?

21 A. They would be bottom. Yeah, I guess that is where they
22 would be seniority list.

23 Q. If they try to fly anywhere except from St. Louis, they
24 can only fly as reserve pilots because they are not senior
25 enough to do anything else, right?

1 MR. KATZ: I am going to object, Your HOnor. He
2 didn't testify about the provisions of Supplement CC. This
3 is way beyond the scope of direct.

4 THE COURT: I will sustain the objection.

5 The Comair pilots, the question of the strike would
6 be put to a vote.

7 A. The Comair pilots voted to strike. They are the only
8 ones who could put themselves on strike.

9 THE COURT: The union didn't say you are going on
10 strike?

11 A. Oh, no, the Comair pilots were the only ones involved in
12 that, yes, sir.

13 Q. I am going to give you now what I have marked as exhibit
14 444, plaintiff's 444.

15 Q. Do recognize this as a press release from ALPA from May
16 31, 2001?

17 A. Yes.

18 Q. All right. Now, you testified earlier that the major
19 contingency fund is only used for strike and strike
20 preparation, correct?

21 A. Among other things. Whatever the executive board, by
22 our policies, you can quote the policies if you want to see
23 what is authorized.

24 Q. Don't put it up yet. It hasn't been --

25 Q. So it is exactly, it is beyond the strike and strike

1 preparation that you spoke about before?

2 A. It can be under the guidelines whatever the major
3 contingency fund, not for normal operations but the executive
4 board can interpret it at its leisure what it wants to fund.

5 MR. JACOBSON: I would like to offer exhibit 444 in
6 evidence.

7 MR. KATZ: No objection.

8 THE COURT: P-444 in evidence.

9 MR. JACOBSON: All right. Now, under this time, May
10 31, 2001, which is, you know, kind of still in the art of the
11 TWA pilots struggle with American, the Ryan airline pilots
12 are receiving one million dollars in the major contingency
13 fund, correct?

14 A. I think we should at this point clarify what the press
15 releases say and what a million dollars grant means.

16 A check is not written for one million dollars.
17 Its authorization, up to a million dollars, sometimes these,
18 no money was even spent, maybe it is a very small amount. We
19 don't say here is a million dollars, here is your check. Go
20 an about about your way.

21 This is an organization in the press release of how
22 much we would commit to this project. We might not spend any
23 money out of it. I want to make that clear. This is not
24 writing someone anybody a collect.

25 Q. But it is committing out of the 70 million dollars war

1 chest you have there these pilots can get up to a million
2 dollars for the activities that are described in the press
3 release and the resolution, correct?

4 A. That is correct.

5 Q. And here the item that is described is strategic
6 planning and communication programs. Correct?

7 A. Yes.

8 Q. Strategic planning is something that MECs do on a normal
9 basis. Correct?

10 A. They normally do.

11 Q. Communications programs is something they do on a normal
12 basis as well, isn't it, sir?

13 A. That's correct.

14 Q. All right. And Ryan joined ALPA in August of 1998?

15 A. I think that is true.

16 Q. That is what it says in the second paragraph. Right.
17 So here we are, move down further, how many pilots were there
18 at Ryan at that point?

19 A. I don't remember, but it was an extremely small carrier.
20 I don't remember the number.

21 Q. A very small carrier. It joined ALPA in August of 1998.
22 So here we are less than three years later and they are
23 receiving up to a million dollars for strategic planning and
24 communications. Correct?

25 A. Yes.

1 Q. And the article goes on to state what the issues, the
2 key issues, are in this contract dispute, doesn't it, sir, if
3 you look at the fifth paragraph?

4 A. Yes.

5 Q. And so it says there are two primary sticking points,
6 doesn't it? That is what your association says?

7 A. Including the use, and didn't recognize any seniority at
8 all.

9 Q. One is you didn't give sick days, and the other is it
10 didn't recognize seniority, Ryan Air did not?

11 A. That is what it says.

12 Q. And of course, seniority is a basic tenant of unionism
13 that provides protection?

14 A. That's correct.

15 Q. All right. The same thing that TWA pilots were fighting
16 for?

17 A. All pilots fight for seniority.

18 Q. Same thing the TWA pilots were fighting for, correct?

19 A. Sure.

20 Q. I move to another press release which I will mark as
21 plaintiff's exhibit 445. Do you recognize this as a press
22 release from ALPA, September 6, 2001?

23 A. Yes.

24 Q. Printed on the ALPA dot org website?

25 A. Yes.

1 MR. JACOBSON: I offer P-445 in evidence.

2 MR. KATZ: No objection.

3 THE COURT: Press release, P-445 in evidence.

4 Q. Let look at the first paragraph. This relate to the
5 America West pilots, correct?

6 A. Yes.

7 Q. And that is a reasonably large airline, what was it
8 about eight largest at the time in the U.S.?

9 A. I don't remember their ranking. I think they had a
10 little less than 2000 pilots.

11 Q. Okay. And they are, in this press release, receiving a
12 pledge, as you called it, of three million dollars from the
13 major contingency fund, correct?

14 A. Yes.

15 Q. And full support of their fellow ALPA members?

16 A. Yes.

17 Q. For contract negotiations.

18 A. Yes.

19 Q. Sir?

20 A. Yes.

21 Q. Okay. So because of the extended length of the contract
22 negotiations, it was deemed something beyond the ordinary.
23 Is that right?

24 A. Beyond the ordinary?

25 Q. Beyond the ordinary MEC type expense?

1 A. What is going on in all these press releases, and thank
2 you for bringing them all to my attention, the differences in
3 language and you allowed me to remember the differences and
4 why some languages speak of strikes and some do not. If the
5 strike preparation is not in the press release, the only
6 reason for that is the MEC has requested this money but they
7 haven't yet taken a strike vote or there pilots, they are
8 willing to consider a strike. So if they have already done
9 that the press release will reflect, it is for strike
10 preparations because they already got the vote of pilots to
11 proceed with strike preparations.

12 In the case of America West and Ryan Air and these
13 others, you probably have so I -- I don't know how many more
14 you have, if it doesn't say strike preparation, the only
15 difference is they haven't asked their pilots fully for the
16 support of a strike yet. If they have, they talk about
17 strike preparation. If they do not, the press release says
18 whatever it says.

19 But in all cases, the anticipation, frankly, the
20 only exception I knew was TWA who had long struggled with
21 Carl Icahn, which wasn't talking about strikes and we amended
22 the major contingency fund to an allow TWA access from '88,
23 to -- almost 13 years. The reason strike preparation doesn't
24 appear, they haven't asked the pilots for a strike vote yet
25 or authorization to proceed. So this is, all these were

1 anticipation, at some point, this may come to a strike.

2 Q. Well, any dispute with an employer who is not willing to
3 agree to terms may at some point come to a strike, sir?

4 A. It may.

5 THE COURT: But in this case, the case we have is
6 not a negotiate with their employer.

7 MR. JACOBSON: That's correct.

8 THE COURT: It is a negotiation with another union.

9 MR. JACOBSON: That's correct, your Honor.

10 THE COURT: One does not normally strike another
11 union. You strike the employer.

12 MR. JACOBSON: One can strike the employer or threat
13 tone strike the employer to bring pressure and leverage
14 against the other union.

15 THE COURT: You are making an argument now. That
16 is not a fact, and that is not a question. If it brings
17 pressure or not. But all these press releases are strikes
18 against the employer in the context of a labor negotiation
19 for a CBA, a collective bargaining agreement. That is not
20 what was going on here.

21 Go ahead. Ask your next question.

22 Q. So we are not at a strike vote. We are in negotiations
23 and they are getting three million dollars from the major
24 contingency fund, correct?

25 A. They requested it and they were granted it, yes.

1 Q. Thank you?

2 Q. Mr. Woerth, I am going to give you another press
3 release, this is marked as plaintiff's exhibit P-446. Sir,
4 do you recognize this as a June 18, 2002 press release?

5 A. Yes, I do.

6 Q. All right. This one is talking about strike
7 preparation, correct?

8 MR. KATZ: Your Honor, I am going to object to any
9 questioning about this. It is not only repetitive but it is
10 after April, 2002, and is therefore irrelevant. I would
11 remind the Court of the ruling made at the pretrial
12 conference about events occurring after April 3, 2002.

13 THE COURT: Yeah, this is, this press release is in
14 in the context of a company negotiating a labor agreement
15 with its employer. It is different than what is involved in
16 the negotiation that was involved in this case. Not the same
17 thing. I am going to sustain the objection.

18 MR. KATZ: Thank you, your Honor.

19 Q. Let's talk a little bit about the airline industry
20 economics during the period relevant to this case, all right,
21 sir? We all know about September 11, 2001. And the damage
22 that did to the air transport industry. You talked about
23 that eloquently yesterday, sir. Correct?

24 A. I hope I was eloquent.

25 Q. You were. Prior to that date, however, and for a period

1 of two to three years prior to that date there, the airline
2 industry was doing well, wasn't it?

3 A. It was doing very well until the dot com bubble burst in
4 '99, but it was still profitable.

5 Q. Still hiring pilots?

6 A. Yes.

7 Q. TWA was buying a new air airplane every day for the past
8 two years. Were you aware of that?

9 A. Sounds right.

10 Q. Newest fleet of any of the major airlines, correct?

11 A. I understand it was with the 757.

12 Q. You know THAT the TWA pilots were stapled, were stapled
13 below approximately 400 new American airline pilot hires who
14 were hired between the date that the transaction was
15 announced and the date it closed, between January 9 and April
16 10, 2001?

17 THE COURT: Not all TWA pilots.

18 MR. JACOBSON: The ones that were stapled, your
19 Honor.

20 THE COURT: I was reading your question. Your
21 question just said TWA pilots.

22 MR. JACOBSON: I thought I said the TWA pilots that
23 were stapled. I will rephrase it.

24 Q. The TWA pilots that were stapled were stapled below some
25 400 new hires at American Airlines, people that were hired

1 between the announcement of the deal in January and its
2 closing in April of 2001, correct.

3 MR. KATZ: Excuse me. I am going to object as
4 before, he is questioning the witness about a subject that
5 the witness did not testify about on direct and that is the
6 composition of the merged seniority list and Supplement CC.
7 The witness did not testify about the provisions of
8 Supplement CC.

9 THE COURT: I don't necessarily, I know that, we
10 limit cross to the subject on direct but this man was
11 president of the union. I am going to allow a little broader
12 cross than for me to parse precisely where the direct was.
13 Ask the question again.

14 Q. I am asking about the financial condition, the financial
15 realities of the aviation market in the period prior to 9-11.
16 All right, sir. And some of the --

17 THE COURT: He answered that question. He said it
18 flattened a little bit with the dot com bust, and it was
19 still relatively prosperous until 9-11.

20 Q. And one of the earmarks of this prosperity that I was
21 asking about to see whether he knew and could knowledge it
22 was that in fact American Airlines with its approximately
23 11,000 pilots had employed another 400 or so in the time
24 period, from from the point where the TWA acquisition was
25 announced until it closed and that those TWA pilots who were

1 stapled were actually stapled below them, right?

2 A. That is what my understanding was.

3 Q. There was a big demand at that point in time until 9-11
4 for experienced pilots. Isn't that correct, sir?

5 A. If there is still hiring going on, yes, there was.

6 Q. Of course, that situation was different than the
7 situation we had back during the time of the Eastern strike
8 which you referred to in your direct testimony, right? Do
9 you remember the time when Eastern was on strike for about a
10 year?

11 A. Well, I will never forget that. Sure I remember the
12 strike.

13 Q. And the economy at that time wasn't as good?

14 THE COURT: Compared to when?

15 MR. JACOBSON: Compared to the period of time up to
16 9-11 there the aviation industry.

17 A. I think the period of time in the late nineties was
18 better than the late eighties and early nineties, but again I
19 am not -- I am not an economist. That is my general
20 feeling.

21 Q. You are working in the union as a vice president and
22 president, you are working at the level of the guts level of
23 the economy, you are dealing with employers whose relative
24 strength depends in part on how badly they need pilots,
25 doesn't it?

1 THE COURT: You are opening a wide door to
2 testimony on the TWA financial condition. I want you to know
3 that. A wide, wide door.

4 MR. JACOBSON: All right. Let me close the door for
5 a second, your Honor.

6 THE COURT: I am just telling you.

7 Go right ahead.

8 MR. JACOBSON: Thank you, your Honor.

9 Q. As a labor union, do you have more leverage with
10 employers when they need pilots or when they don't need
11 pilots?

12 A. I think it is almost irrelevant.

13 Q. Okay.

14 THE COURT: The service may be more important when
15 the demands for pilots is low.

16 A. My point, your Honor, was the pressures, is every
17 negotiation is all about the financial condition of the
18 company, they may be retiring pilots, they need to hire some,
19 maybe not, but that environment is also locally focused on
20 the condition of the company, the financials of the company
21 are the number one factor of any negotiation.

22 Q. Let's move if we could to one of the exhibits you looked
23 at on your direct examination. It is exhibit D 2.

24 THE COURT: That is in evidence.

25 MR. JACOBSON: Yes, your Honor.

1 Q. And just to recognize from the screen, that is the board
2 of directors resolution regarding pilot unity from the
3 October 16 to 20, 2000 meeting, correct?

4 A. Yes.

5 Q. You were asked in your direct testimony to read
6 paragraph 3 of the resolution. I would like to just go
7 through the whole, therefore, be it resolved portion of the
8 final resolution. Go to page 3.

9 And from be it further resolved down to the bottom
10 there. So we can see it. All right.

11 This is the be it resolved portion of the pilots --

12 THE COURT: This is October, 2000.

13 MR. JACOBSON: Yes, your Honor.

14 THE COURT: This is before they announced the
15 American TWA deal.

16 MR. JACOBSON: Yes, your Honor.

17 THE COURT: This.

18 THE COURT: Just so the jury is oriented.

19 MR. JACOBSON: I appreciate that. There is a lot of
20 dates.

21 Q. Do you recognize this, sir?

22 A. I do.

23 Q. You you recall reading the paragraph 3, which continues
24 on the next page, to the jury.

25 A. Point 3?

1 Q. Point 3?

2 A. Proposed merger agreements.

3 Q. Proposed merger agreements with independent pilots
4 associations will be subject to approval by the executive
5 council and ratification by the executive board, in
6 accordance with article one, Section 11, of the ALPA
7 Constitution and bylaws.

8 Do you remember reading that?

9 A. Yes.

10 Q. Would you please read to the jury the fourth paragraph
11 of this resolution?

12 A. ALPA representation campaigns and elections will remain
13 available as a vehicle to be used in appropriate situations.

14 Q. All right. And by representation campaigns, you are
15 referring to the representation cards that we talked about
16 extensively yesterday, correct?

17 A. That is what you usually use to do a campaign, yes.

18 Q. So this meeting, meaning it is available as a vehicle to
19 use in an appropriate situation?

20 A. I remember why the language was put in by lawyers to
21 make sure we kept that available. We weren't excluding that
22 possibility.

23 Q. Very good. Now, I was unclear in your testimony
24 yesterday whether your visiting the APA board in October was
25 at your instigation or their invitation. Were you invited or

1 did you ask to go?

2 A. I was asked do go.

3 Q. You were asked to go. You didn't ask to go yourself?

4 A. I don't remember ever asking to go.

5 Q. I am going to give you a document I have marked as
6 exhibit P-447.

7 Take a moment to look at that document, sir.

8 A. Yes.

9 Q. This?

10 Q. All right. Does this document refresh your recollection
11 as to whether you asked to address the APA board at your
12 October meeting?

13 A. I don't remember doing it. But I will be glad if I did.
14 And if this substance corrected, I probably called. But I
15 don't remember doing it. I probably should have if I hadn't.

16 Q. All right. I am not sure I understood the last point?

17 A. We are trying to organize pilots. If I asked for the
18 meeting, I would be glad to have asked for it. I don't
19 remember having done it ten years ago. I am glad it
20 happened.

21 Q. From reading this do you recall you were aware at that
22 point before you asked that APA had in fact, was going to
23 select an ALPA exploratory committee at that October meeting
24 you you were going to address?

25 A. I don't remember they were going to do it then. I do

1 remember, we had been in discussions for months, that if they
2 did not start something, I was going to terminate the
3 services agreement and not deal with them any more. We had
4 been working with them in a dance for years, and either they
5 get serious or or I was going to cut them off. I didn't know
6 when they were going to make the decision but I had thrown
7 down the gauntlet.

8 MR. JACOBSON: I think I would like to move as the
9 last answer be struck as not responsive.

10 THE COURT: It is interesting. No, I am going to
11 let it stand.

12 MR. JACOBSON: All right.

13 THE COURT: It puts a slightly different flavor on
14 the relationship between ALPA and APA.

15 Q. You knew you they were selecting an ALPA committee, a
16 commit to possibly explore rejoining ALPA?

17 A. I knew I had made that insistent if they do, if they
18 wanted to continue our agreement. I knew that much.

19 Q. You asked to go to the meeting?

20 THE COURT: This agreement, were you providing
21 services to APA at that point.

22 A. At some point in the future --

23 THE COURT: I am talking about 2000.

24 THE WITNESS: I believe we were.

25 THE COURT: Give me an idea what kind of services

1 you were providing to them. When I say you, I mean ALPA was
2 providing to APA in this timeframe around October of 2000.

3 A. Your Honor, to my best recollection, the services
4 normally involved our economic and financial analysis
5 department to evaluate work rules, we had software that could
6 evaluate different proposals and work rules. It may have
7 been that they could attend our retirement insurance
8 seminars. I don't remember all that was provided.

9 THE COURT: You said there was an agreement. Was
10 it committed to writing?

11 A. I am not sure. I believe it was but I can't testify
12 with certainty that it was.

13 THE COURT: Okay. And did APA pay you for these
14 services.

15 A. It is my understanding that they did.

16 THE COURT: Okay.

17 Q. And to close the loop on the area that the Judge asked
18 about, they paid you for the services and among the things
19 you did is you provided them with advice on contracts and
20 contract terms as they were getting ready for the Section 6
21 negotiations with American Airlines.

22 MR. KATZ: I am going to object to the question,
23 your Honor. If there is a question about the terms of the
24 services agreement, the best evidence would be the service
25 agreement itself.

1 THE COURT: Well, it may be, but if he knows the
2 answer to that question, I am going to let him -- were they
3 getting this economic analysis in connection with their
4 negotiations with American over the terms of the collective
5 bargaining agreement? That is the question. I will allow
6 him to answer that question.

7 THE WITNESS: Your Honor, I --

8 THE COURT: If he knows. Did he doesn't know, he
9 doesn't know.

10 A. I don't know for certain, but it only makes sense that
11 it was. I am not sure why you are analyzing stuff if you
12 don't bargain. I assume that I assume that is what it was
13 for.

14 MR. JACOBSON: Thank you.

15 Q. So you asked, I guess I should offer that document in
16 evidence. I will move exhibit P-447 in evidence, your Honor.

17 MR. KATZ: I object, your Honor. This is an
18 internal Allied Pilots Association document.

19 THE COURT: Yes, this was used to refresh his
20 recollection. He also, I am not going to admit 447.

21 MR. KATZ: Thank you, your Honor.

22 THE COURT: But the testimony stands about this
23 document.

24 Go ahead.

25 MR. JACOBSON: Thank you.

1 Q. When you addressed the APA you talked to them for about
2 two hours, right?

3 A. You are going back to October --

4 Q. Yes, sir. I know, you talked several times. In October
5 of 2000. It was fairly extensive comments, about two hours
6 worth?

7 A. I was pretty tired so it must have been about two hours
8 by the time it was over.

9 Q. And they provided a transcript which you looked at
10 yesterday?

11 A. Sure.

12 Q. They gave you an opportunity to prepare an executive
13 summary based on that transcript that you could have
14 distributed to the APA members. Do you recall doing that,
15 sir?

16 A. Repeat the question, please?

17 Q. They gave you the opportunity to prepare an executive
18 summary based off of the transcript they gave you, that would
19 be included in the minutes they circulated to their members
20 at APA?

21 A. I recall, I don't recall that being the purpose. I
22 thought it was reviewed for accuracy. I don't remember I was
23 going to do the executive summary. That might have happened
24 but I don't remember that.

25 Q. All right. Let me show you a document and see if that

1 refreshes your recollection on this issue.

2 I am giving you what has been marked as plaintiff's
3 P-448, sir. Does this refresh your recollection as to
4 whether or not you created an executive summary for inclusion
5 in their minutes.

6 A. No, it does not refresh -- I remember reviewing the
7 minutes, rather, but I do not have a recollection of
8 preparing an executive summary.

9 Q. All right. This document is addressed to you?

10 A. Yes.

11 Q. Did you receive it, sir?

12 A. Yes.

13 MR. JACOBSON: I would move for the admission of
14 exhibit P-448.

15 MR. KATZ: No objection.

16 THE COURT: 448 in evidence. That is October 30.

17 MR. JACOBSON: Yes, your Honor. October 30, 2000.

18 Q. Could you read to the jury the one paragraph of text
19 that is in that exhibit since we don't have it to blow up?

20 A. Thank you. That is.

21 Q. Thank you.

22 A. Thank you, Captain -- Thank you and Captain Atterian for
23 addressing our board of directors last week. We will forward
24 a transcript including the questions and answers as soon as
25 it is available and request you provide an executive summary

1 for inclusion in our minutes at your earliest convenience.
2 You do not have to include the questions and answers in your
3 summary unless there are some interesting -- unless there
4 were some interesting enough to make into bullet points.
5 That is up to you.

6 Q. This letter was from whom?

7 A. Captain Richard Lavoy, President of Allied Pilots.

8 THE COURT: It it is a fax, not a letter.

9 MR. JACOBSON: It is a fax letter.

10 A. Yes.

11 THE COURT: But the cover sheet was used to convey
12 the message.

13 MR. JACOBSON: Yes, your Honor. It appears to have
14 been faxed although there is no fax line on the top.

15 THE COURT: There is no data.

16 Q. You in fact received the transcript which you reviewed
17 and we talked about yesterday so we wouldn't go into that in
18 any detail?

19 I would like to give you what is previously marked
20 as exhibit P 115.

21 That is a three-page document, sir, signed by you.

22 A. I see three pages, and signed by me. I haven't read it
23 in a while.

24 Q. Take your time, sir.

25 A. Okay.

1 Q. Are you familiar with that document, sir?

2 A. Yes.

3 MR. JACOBSON: I move exhibit P 115 in evidence,
4 your Honor.

5 MR. KATZ: No objection, your Honor.

6 THE COURT: That is December 12.

7 MR. JACOBSON: Yes, your Honor. December 12, 2000.

8 THE COURT: I am going to admit by consent, P 115
9 into evidence.

10 MR. JACOBSON: Thank you. Sorry to step on you
11 there.

12 Q. This is a December 12, 2000, contract from, letter from
13 you to John Darrah, the president of the Allied Pilots
14 Association, correct

15 A. Yes, it is.

16 Q. And you just mentioned you thought you had asked to be
17 invited to their meeting and because of an issue relating to
18 a service contract that you had, that you, ALPA, had with
19 allied. Correct?

20 A. Yes.

21 Q. And this is the service contract you had, that ALPA had
22 with Allied?

23 A. Well, this is what, I can't testify as, it is the only
24 one or if we had other oral agreements, but this speaks to
25 what it was in December. I do not remember what happened

1 prior to this. I am looking at this now.

2 Q. That is fair. Could you read the first paragraph of the
3 letter?

4 A. The Air Line Pilots Association, ALPA, has agreed to
5 provide certain services to the Allied Pilots Association in
6 order to assist your union with its preparation for contract
7 negotiations. This letter sets forth the services that ALPA
8 will offer, and the terms and conditions pursuant to which
9 those services will be provided.

10 Q. All right. And you list number of services, turn to the
11 last page, it is signed by you as president of ALPA.
12 Correct?

13 A. Yes.

14 Q. Signed by John Darrah as president of the Allied Pilots
15 Association?

16 A. Yes.

17 Q. And your association, ALPA, performed this contract
18 properly, correct? You performed the contract?

19 A. I certainly hope so.

20 Q. You provided services you said you provided?

21 A. I would think we would.

22 Q. Because they were heading into their Section 6 of the
23 Railway Act negotiations with American Airlines and they
24 needed your help.

25 A. Looks like that is what is going on.

1 Q. Now I would like to show you what has been marked as
2 exhibit P 111.

3 Do you recognize that document, sir?

4 A. Just a moment, please.

5 Q. Sure. Certainly.

6 A. Yes.

7 Q. And this is a letter to you, right?

8 A. Yes, it is.

9 Q. It is from the Allied Pilots Association, the American
10 Pilots Union?

11 A. Yes.

12 MR. JACOBSON: I would like to offer exhibit P 111
13 in evidence, your Honor.

14 MR. KATZ: No objection.

15 THE COURT: P 111 in evidence.

16 Q. Now, this letter is dated November 27, 2000.

17 A. Yes.

18 Q. So shortly before the service agreement we just looked
19 at but after your speech at the APA?

20 A. Yes.

21 Q. And they have appointed an ALPA Exploratory Committee,
22 the Allied Pilots have?

23 A. Yes.

24 Q. And they want to come to your offices to basically get
25 information?

1 A. Yes.

2 Q. All right. And they list a number of topics that they
3 want to meet with you and your people about, correct?

4 A. Yes.

5 Q. And they want you to assign a point of contact to be the
6 person that they know they can reach so there is no confusion
7 in communications, correct?

8 A. Yes.

9 Q. And who did you appoint as that point of contact, sir?

10 A. I don't remember if it was Howard Atterian or
11 Rindfleisch. I don't exactly remember. I would assume it
12 would be one of those two people.

13 Q. It would either be Howard Atterian or Ron Rindfleisch?

14 A. Most likely but I don't remember the point of contact.
15 I am sure I appointed somebody. I just don't remember who.

16 Q. Ron Rindfleisch, remind us, he is the person in charge
17 of bringing in new members?

18 A. That is a gross exaggeration of Ron Rindfleisch's job.

19 Q. And Howard Atterian, what was his job?

20 A. He was my chief of staff. He is executive
21 administrator. He was my right-hand man.

22 Q. Okay.

23 THE COURT: MR. Jacobson, you can pick a time.

24 MR. JACOBSON: This is as good as any. I am always
25 ready to wait.

1 THE COURT: I didn't mean to suggest that. But
2 this is a convenient time for a break. We have been at it
3 about an hour and 20 minutes, we will give the jury a little
4 break.

5 Do not discuss the case among yourselves. Keep an
6 open mind until you have heard all the evidence. All rise.
7 We will be back at ten o'clock.

8 (The jury leaves the courtroom.)

9 THE COURT: I received this for the record this
10 morning the Rule 50 motion.

11 MR. KATZ: Yes, your Honor.

12 THE COURT: In this case. Are the plaintiffs
13 intending to give a written response?

14 MR. JACOBSON: I haven't seen it yet, your Honor,
15 but I find it hard to believe that we wouldn't.

16 THE COURT: You served it.

17 MS. RODRIGUEZ: It appeared on ECF last night. I
18 haven't had time to download it.

19 MR. FRAM: We provided paper copies this morning,
20 your Honor.

21 MS. RODRIGUEZ: I haven't seen those.

22 MR. JACOBSON: I haven't seen them either.

23 THE COURT: When you get a chance to go through the
24 brief, it is, without prejudging it, it is a thorough job.
25 So I assume you may want to respond to it. And just let me

1 know so I can schedule argument. Now, I would like to
2 schedule the argument before I submit the case to the jury.
3 But that is the crucial, that is, it is really the timeframe
4 that matters, before the case goes to the jury. So give me
5 the time.

6 MR. JACOBSON: We will talk among ourselves and get
7 back to you.

8 THE COURT: Very good.

9 (Recess).

10 (Jury enters the courtroom)

11 DUANE WOERTH, resumes.

12 CONTINUED CROSS EXAMINATION

13 BY MR. JACOBSON:.

14 THE COURT: Mr. Jacobson.

15 MR. JACOBSON: Thank you, your Honor.

16 Q. Now, Mr. Woerth, you testified yesterday about how you
17 went to speak to the APA board again on April 5, three days
18 after the TWA MEC waived their scope. Do you recall that?

19 A. Yes, I do.

20 Q. All right. And was it that you, if I recall, you said
21 that something along the lines I, of they have taken a hard
22 step, now you have to, something along those lines?

23 A. Something along those lines.

24 Q. All right. Let me ask you, isn't it a fact what you
25 did talk about was the political climate in Washington, DC,

1 you talked to them about that?

2 A. I think I talked to them about quite a few things.

3 Q. Quite a few things. How long a conversation do you
4 think it was to talk?

5 A. I don't really have a, I couldn't make an accurate
6 estimate.

7 Q. You wouldn't dispute someone who would describe it as a
8 brief comment?

9 A. A brief comment I would dispute.

10 Q. All right. What is PEBs?

11 THE COURT: I am sorry?

12 Q. PEBs?

13 THE COURT: PEB?

14 Q. Letter P, letter E, letter B?

15 A. Presidential Emergency Board.

16 Q. That is mechanism by which the President can prevent a
17 strike?

18 A. Yes.

19 Q. Did you talk to the American pilots about these
20 presidential emergency boards?

21 A. I might have. I don't remember all of what I talked
22 about that day.

23 Q. Did you talk about reserved rests?

24 A. If I was given an update on what is going on that day,
25 that might have, but like I said, I do not remember having I

1 talked about.

2 Q. And age 60 issues?

3 A. Most likely. Don't remember.

4 Q. From?

5 Q. Those are things that you and they would all have in
6 common as far as interest, right?

7 A. Could have happened, I don't remember.

8 Q. Did you also information them about the current status
9 of negotiations on the Comair strike?

10 A. Comair strike.

11 Q. Yes?

12 A. As I already testified, I don't remember having talked
13 about it.

14 Q. Let me give you something to see if it refreshes your
15 recollection about what you talked about. This is exhibit P
16 13?

17 THE COURT: In evidence already?

18 MR. JACOBSON: I don't think it is, your Honor.

19 THE COURT: P 13 is not in evidence.

20 Q. Would you look at this and see if it refreshes your
21 recollection regarding your comments to the APA board on
22 Thursday, April 5, 2001?

23 A. That is their characterization of some of the things I
24 talked about.

25 Q. Their being APA?

1 A. Apparently. I think this is -- is this their document?

2 Q. It would be their minutes?

3 A. It would be their minutes then.

4 Q. All right. Had you seen these minutes or had a chance
5 to comment on them at any point?

6 A. I don't ever remember seeing this. They might have sent
7 me a different copy but I don't remember this.

8 Q. All right. Well, this one has large white areas of
9 material that was removed in discovery in the case. So it
10 would look unfamiliar, probably. Reading the comments here,
11 does this refresh your recollection about the topics you
12 addressed with the APA on April 5?

13 A. It really doesn't, it does not.

14 THE COURT: Okay.

15 Q. All right.

16 THE COURT: You are not offering it.

17 MR. JACOBSON: I am not. He doesn't recognize it.
18 It doesn't refresh.

19 THE COURT: Okay. I have marked it for
20 identification only.

21 MR. JACOBSON: Yes, your Honor.

22 Q. Mr. Woerth, I would like to give you what has been
23 marked as exhibit P-339?

24 THE COURT: P?

25 MR. JACOBSON: Yes, sir.

1 Q. This will be a little hard to recognize as well because
2 it is a large redacted document. But if you look at the
3 first page you see it is addressed to you.

4 A. Yes.

5 Q. All right. And it is from Ron Rindfleisch?

6 A. His name says from Ron Rindfleisch, yes.

7 Q. Do you recognize this as a heavily redacted version of a
8 memo sent to you?

9 A. Since it is 95 percent redacted I don't recognize much.
10 Usually when I get a memo, the person usually initials it or
11 science their name. I am curious why there is no name or
12 signature behind Rindfleisch's name if it is from him.

13 Q. Looking at the lower right-hand corner of the document
14 do you see a stamp on the first page, ALPA, 039344. And the
15 following page, 445?

16 A. Yes.

17 Q. Do you recognize as indicating there is a document that
18 comes from ALPA's files?

19 A. That is what you say. I mean, I haven't been dealing
20 with these documents before.

21 MR. JACOBSON: This time I would like to offer P-339
22 in evidence.

23 MR. KATZ: I object. It contains hearsay and
24 double hearsay, and there is no proper foundation that has
25 been laid. The witness doesn't remember seeing it.

1 THE COURT: Well, I am going to let it in. This is
2 a communication from the, one fairly high ranking ALPA
3 officer to, or committee head, to the president of ALPA. I
4 am going to allow it.

5 Q. All right. Could you enlarge this part here? The date
6 of this memo is what, sir?

7 A. October 18, 2001.

8 Q. It is addressed to you.

9 A. Yes.

10 Q. Copies to whom?

11 A. Howard Attarian, Jalmer Johnson, Seth Rosen and Ken
12 Cooper.

13 Q. And Howard Attarian you just testified was your
14 right-hand man at ALPA?

15 A. That's correct.

16 Q. Jalmer Johnson was the highest staff person?

17 A. Yes.

18 Q. Seth Rosen is head of the representation department?

19 THE COURT: No. Wasn't he --

20 A. No. Set.

21 THE COURT: He was the legal department? Wasn't he?

22 A. No, your Honor.

23 THE COURT: That was Cohen.

24 THE WITNESS: Correct, your Honor.

25 Q. Seth Rosen is head of the representation department?

1 A. That's correct.

2 Q. And therefore, Ron Rindfleisch's boss, whether immediate
3 or on the chain of command?

4 A. I think Ron worked in, I am not exactly sure who Ron
5 Rindfleisch's boss was.

6 Q. Ken Cooper, who is that?

7 A. He is assistant director of representation. He worked
8 for set he worked for Seth.

9 Q. The text that is not redacted on this first page, it
10 says what, sir?

11 A. American: Pilot contact, Americans are quite angry --

12 Q. Sir, on the first page. Before we get to that page.

13 What is the one piece of unredacted text on that page?

14 A. The following is a list of carriers with an interest in
15 ALPA representation.

16 Q. All right. And so other carriers who might be there,
17 that is what has been removed, is that right?

18 A. I have no idea what was removed.

19 Q. The second page, it is talking about American. So
20 American is in this list of carriers, interested in ALPA
21 representation. Correct, sir?

22 A. If that is hit, yes.

23 Q. Mr. What does it say about American, what does Mr.
24 Rindfleisch tell you and the other top ALPA executives?

25 A. It says American: Pilot contacts are very concerned,

1 actually quite angry, that ALPA continues to represent the
2 TWA pilots. I always tell them we must. And that we are
3 even supporting legislation, the Bond bill, et cetera, that
4 could damage the seniority integration process as well as the
5 card campaign."

6 Q. All right. So here in October of 2001, you are
7 receiving a memo from one of the people working for you and
8 the organization you are to head, talking about a card
9 campaign for American, correct?

10 A. It doesn't say it is ALPA's card campaign because it is
11 not.

12 Q. I didn't say that. I said it is talking about a card
13 campaign, correct?

14 A. That is what it says.

15 Q. It is saying that the legislation could be damaging to
16 the card campaign. Correct?

17 A. That is what it says.

18 Q. By that you understand that the legislation might cause
19 American pilots --

20 THE COURT: Are you asking him to read
21 Rindfleisch's mind?

22 MR. JACOBSON: No. I am asking him for his
23 understanding as the president of the organization.

24 THE COURT: Then ask him what his understanding
25 was.

1 MR. JACOBSON: All right, your Honor.

2 Q. And what do you understand the phrase, "damage the
3 seniority integration process" to mean?

4 A. First of all, I don't remember this document at all.
5 This is the first time I have seen it. I don't know what Mr.
6 Rindfleisch means. Apparently, whoever he is talking to, I
7 don't know who he is talking to. I have no idea.

8 THE COURT: He is talking to you. I mean the memo
9 is addressed to you.

10 THE WITNESS: It is, your Honor. But I don't, I am
11 not grasping what he is trying to tell me.

12 THE COURT: Oh, okay.

13 Q. That is fair. If you are not grasping it, then we will
14 move on.

15 THE COURT: Okay.

16 Q. I would like to show you what has been marked as exhibit
17 P-356. Have you had a chance to review the document?

18 A. Yes.

19 Q. This is a letter to you from Bob Pastore forwarding four
20 resolutions from the special MEC meeting, the TWA MEC.
21 Correct?

22 A. I am sorry. I didn't see the last one, I only reviewed
23 three out of four.

24 Q. Okay.

25

1 (Pause)

2 Q. This is a document you received on or about December 6
3 of 2001, sir?

4 A. It was mailed December, so I probably received it very
5 shortly thereafter.

6 MR. JACOBSON: You move exhibit 356 in evidence.

7 MR. KATZ: No objection.

8 THE COURT: There being no objection, P-356 in
9 evidence.

10 THE COURT: P-356.

11 Q. In this is a December 6, 2001 letter from Bob Pastore,
12 TWA MEC master chairman?

13 THE COURT: Including four TWA MEC resolutions.

14 MR. JACOBSON: Yes.

15 Q. Do you see that?

16 A. Yes.

17 Q. You received this?

18 A. Yes.

19 Q. Did you review the resolutions?

20 A. Yes, I have.

21 Q. Excuse me?

22 A. Yes.

23 Q. At the time, back in December of 2001, did you review
24 the resolutions?

25 A. Yes.

1 Q. Did you take any action on these resolutions?

2 A. I think we were going to forward things to the next
3 executive council meeting, if I recall. But I don't remember
4 exactly what we did, but that is what I think we did.

5 Q. All right. And let's turn to the second resolution, the
6 resolution 01-118. Are you there, sir?

7 A. Yes.

8 Q. And this is a formal request for money, from the MEC for
9 three million dollars from either the major contingency fund
10 or other ALPA budgets for their use, for the extraordinary
11 bankruptcy legal fees and continuing seniority integration
12 issues. Do you see that?

13 A. Yes.

14 Q. Did you take any action to attempt to have the ALPA
15 National resolve to grant the three million dollars being
16 asked for here?

17 A. This was a request that would go to the executive
18 council first, or for executive board approval, so it was
19 processed in that manner, I believe.

20 Q. You believe you sent it down the line?

21 A. I believe I did.

22 Q. Did did you take any steps to advocate for this motion,
23 sir?

24 A. No.

25 Q. All right. And did the TWA MEC receive three million

1 dollars from ALPA as requested here?

2 A. I don't believe they did.

3 Q. Did they receive \$30 from this motion?

4 A. I don't believe any money was granted from the major
5 contingency fund for anything on this regard.

6 Q. Or from the national budgets, or any other source?

7 A. They continued to have their own budget but there was no
8 special allocation of any money, no.

9 Q. Turn to the next resolution, 01-119.

10 A. Yes.

11 Q. You are familiar with this resolution?

12 A. Yes.

13 Q. All right. And this is a resolution with whereases,
14 including statements regarding ALPA National receiving
15 representation pledge cards from pilots of American Airlines
16 look at the fourth whereas. Pilots at American?

17 A. That is what they say. But I don't believe that to be
18 true.

19 Q. The prior paragraph they say ALPA's National's legal
20 staff has stated they have no interest in taking any further
21 action to enforce the ALPA fair and equitable treatment of
22 the pilots?

23 A. That is what the says.

24 Q. Did you have an opinion that was a true belief, whether
25 the belief of the MEC expressed here was accurate?

1 A. I believe by December 4 most people believed that the
2 matter of seniority integration at TWA and American was
3 final. They had imposed their terms, APA and American, I
4 think most people believed it was now over.

5 Q. Did you believe it was over?

6 THE COURT: It wasn't effective until single
7 carrier status was implemented, the so-called Supplement CC,
8 the cram-down.

9 A. It violated the --

10 THE COURT: That wouldn't have any actual on-the-
11 ground effect until the National Mediation Board declared
12 them a single carrier, it would end ALPA's representation and
13 commence APA's representation.

14 MR. JACOBSON: Correct.

15 THE COURT: I think I have that right.

16 Q. Mr. Woerth, do you recall when ALPA seized to be the
17 exclusive bargaining agents for the pilots previously
18 employed at TWA?

19 A. I believe it was in April but I am not sure.

20 THE COURT: April of 2002.

21 A. 2002, I believe.

22 Q. April, 2002?

23 A. Yeah.

24 Q. That is when the period of time for ALPA to make a run
25 at becoming the collective bargaining agent for the combined

1 group expired, approximately a month after single carrier was
2 announced?

3 A. You are asking me a question?

4 Q. Let me rephrase it. Do you recall the National
5 Mediation Board made a single carrier finding?

6 A. Eventually, of course they did.

7 Q. They invited ALPA to submit, if they wanted to, for an
8 election to see whether ALPA or APA would be the exclusive
9 bargaining agent for the newly enlarged group of American
10 Airline pilots, correct?

11 A. That?

12 A. Would be the normal process.

13 Q. And when that time period expired, then you were done at
14 that property, correct?

15 A. I guess that's correct.

16 Q. Look at the last page of this, the resolution portion of
17 this resolution 01-123. Last page.

18 A. Yes.

19 THE COURT: What are you asking the witness to look
20 at?

21 MR. JACOBSON: I am trying to get him to put it on.
22 Here it is.

23 Q. Do you recall this resolution?

24 A. This is a continuation, yes.

25 Q. The things that they asked that you do, that ALPA do?

1 A. Yes.

2 Q. And that one of the things was to condition any re
3 affiliation of the American pilots in ALPA with integration
4 of the TWA pilots per ALPA policy?

5 A. Yes.

6 Q. Did you take any steps to advocate this resolution
7 within ALPA?

8 A. No.

9 Q. And ALPA didn't enact a resolution with terms similar to
10 this at all?

11 A. No.

12 Q. Is that correct, sir, did not?

13 A. Did not.

14 THE COURT: Was there any opposition to the, to
15 Americans application for single carrier status before the
16 National Mediation Board, by anybody, and if so, by whom?

17 A. I don't know, your Honor. Somebody else would have to
18 provide that answer. I don't know.

19 THE COURT: Did ALPA itself oppose single carrier
20 status?

21 MR. KATZ: Your HOnor, we we will have a witness to
22 address that.

23 THE COURT: He is chairman of the union. He might
24 know. If he doesn't know, he doesn't know.

25 A. I do not know.

1 THE COURT: That was one of these resolutions, in
2 fact the first resolution.

3 A. That if that was their request, I don't know how we
4 responded. I would be kind of surprised if we opposed it,
5 but I don't remember, sir.

6 MR. JACOBSON: Thank you, your Honor.

7 THE COURT: Okay.

8 Q. Who is John Feldvary?

9 A. John Feldvary was a U.S. Airways captain who was vice
10 president of finance and treasurer.

11 Q. So he was one?

12 THE COURT: Vice president and finance and
13 treasurer of what.

14 A. Airline Pilots Association. He was a national officer.

15 THE COURT: Of ALPA.

16 A. Yes.

17 Q. He was one of four national officers of of the /PAOERD
18 of 2001, 2002, along with you?

19 A. Yes.

20 Q. And you recall an AFL-CIO convention that you attended
21 in Las Vegas in December of 2001?

22 A. Sure.

23 Q. All right. And there was, at that convention you said
24 you first met the American pilot, John Clark?

25 A. That wasn't my first, I saw him before at board

1 meetings.

2 Q. Oh, that is true. I am sorry. I stand corrected. I
3 apologize. You had met him previously at the APA board
4 meeting, in fact, he was one of the people who asked the
5 question that you responded to.

6 A. Yes.

7 Q. And he introduced himself as the person who had no, made
8 the motion for the ALPA Exploratory Committee?

9 A. I don't remember him saying that. But I mean I know
10 that is what ultimately happened but I wasn't aware, I don't
11 believe I knew that at the time.

12 Q. Okay. That is fair. But you met Mr. Clark again here
13 at Las Vegas?

14 A. Yes.

15 Q. And you went to lunch with him?

16 A. Yes.

17 Q. And you went to dinner with him?

18 A. No, I don't believe I did.

19 Q. You don't recalling to go dinner with him?

20 A. I do not recalling to go dinner with him.

21 MR. KATZ: Your Honor, I am going to ask for a
22 sidebar conference.

23 THE COURT: Okay.
24
25

1 (At sidebar)

2 MR. KATZ: Your Honor, I didn't have an objection
3 to him asking whether Clark went to dinner.

4 THE COURT: Yes. I didn't see anything
5 objectionable with that.

6 MR. KATZ: But where he is going is there is a
7 document that was also submitted in the summary judgment
8 papers. And there was an affidavit that was submitted with
9 the reply brief in the summary judgment process. Feldvary
10 had a expense reimbursement request. And he listed on the
11 expense reimbursement request that Clark was at the dinner
12 with worth that night. However, that is a hearsay statement
13 as to whether Clark was there or not.

14 THE COURT: Business record.

15 MR. KATZ: The record is a business record as to
16 what the expense was. And as to the fact that it was paid.
17 But as to whether Clark was there or not, it is a hearsay as
18 to whether Clark was there.

19 THE COURT: Is he going to deny Clark was there.
20 Is that the idea.

21 MR. KATZ: He did deny that. Feldvary denied Clark
22 was there in an affidavit submitted with our summary judgment
23 reply brief. The receipts that are in evidence that were
24 submitted by Hunnibell and Clark show that Clark was back in
25 Los Angeles at four o'clock that afternoon, he took his car

1 out of the parking lot at four o'clock that afternoon and
2 Clark denied at his deposition that he was there for more
3 than a couple of owe he for the, past two o'clock in the
4 afternoon. So they know that this is false. That.

5 THE COURT: Is it?

6 MR. JACOBSON: No, your Honor. Let's, remember,
7 Clark is an individual who.

8 THE COURT: I know who he is.

9 MR. JACOBSON: He didn't bring any cards or cards
10 from Las Vegas.

11 Next we have Jerry Mugerditchian, I got the card
12 from him and I mailed them to ALPA I got the cards. Clark
13 said I didn't have a date today because of cards. I heard
14 the deposition, that they got the database from him. We have
15 a lot of people here who claim they weren't in places they
16 were. It doesn't suit them to be here. This is a business
17 record and the names of the people there are part of record
18 because it is what they commit in order to get reimbursed for
19 this. I showed it did him. He didn't say he denied it. He
20 said he didn't recall it which is quite different. I will
21 show to it him and see if it reps him recall whether he was
22 there.

23 THE COURT: Well, it could be conflicting
24 testimony. I think it is a business record. I think it is a
25 record people rely on, company relies on it in, you know, in

1 making its reimbursement. I had a huge fraud case involving
2 chits for reimbursement, and the guy was putting dinners and
3 lunches with people, to find out one of them was in Australia
4 for the month, that he was putting them in for.

5 MR. KATZ: Judge, this was a reimbursement expense,
6 whether Clark was there or not.

7 MR. FRAM: If I may.

8 THE COURT: The validity of the reimbursement may
9 depend on who was present.

10 MR. KATZ: They were there for ALPA business at an
11 AFL- CO I business.

12 THE COURT: No. I am.

13 MR. FRAM: Your Honor, if I may, doesn't think this
14 witness can authenticate. To authenticate, state a business
15 record you need the custodian of records. They have to have
16 firsthand knowledge of how the records are kept.

17 MR. PRESS: We have a stipulation that these are
18 business records.

19 MR. KATZ: I never stipulated.

20 MR. PRESS: There was a request to admit.

21 MR. FRAM: Wait a minute. This witness can't do
22 it.

23 MS. RODRIGUEZ: He did it. In a stipulation.

24 THE COURT: It is in, if it is in a request for
25 stipulation.

1 MR. FRAM: Produce them. If you are not going to
2 get this witness to say he has seen it.

3 MS. RODRIGUEZ: You stipulated to the authenticity
4 of the documents in.

5 MR. FRAM: Authenticity doesn't mean admissibility.

6 THE COURT: They have a stipulation, he is going to
7 get in somehow.

8 MR. KATZ: We bring Feldvary in and he says it is a
9 mistake.

10 THE COURT: That is different. That is conflicting
11 testimony. That is what a trial is for. You don't get to
12 keep something out because your side is totally different
13 than the other side.

14 MR. JACOBSON: That would be convenient.

15 THE COURT: That would be convenient but it is not
16 the rule. But I am troubled by having this witness testify
17 as to a document that he knows nothing about.

18 MR. JACOBSON: I don't know that he knows nothing
19 about.

20 THE COURT: Ask him. Before you put what is in it.

21 MR. JACOBSON I would like to ask whether it
22 refreshes his recollection. He said he didn't recall.

23 THE COURT: You can ask. You haven't even asked.
24 I will let you go forward with it. If, this doesn't get in
25 through him. That is all.

1 MR. PRESS: Your Honor, the foundation for the
2 document, and its authenticity, has already been admitted to
3 by the union.

4 THE COURT: But, I don't know what he knows about
5 it.

6 MR. PRESS: I mean there is no other objection
7 left. It is relevant, it is nonhearsay and it is authentic.

8 MR. JACOBSON: Authenticated by the stipulation.

9 THE COURT: Yes.

10 MR. PRESS: So what is left.

11 MR. JACOBSON: I can use it, admit into evidence
12 with any witness.

13 THE COURT: Do you agree this was admitted as a,
14 through either a request for admission or a stipulation?

15 MR. KATZ: I would have to check. I don't
16 remember.

17 MR. PRESS: Oh, Dan, you know.

18 THE COURT: I am going to accept it, his
19 representation. God help you if it is not.

20 But I am going to accept it. And so you can
21 proceed.

22

23

24

25

1

(In open court)

2

3

BY MR. JACOBSON:

4

Q. I am going to give you what has been marked?

5

6

THE COURT: First of all, he never asked the question you asked originally.

7

THE COURT: I forgot the question, your Honor.

8

THE COURT: Whether he had dinner with Mr. Clark.

9

MR. JACOBSON: He said I don't recall having dinner with him.

10

11

THE COURT: All right. I thought that was the question you asked before the sidebar.

12

13

14

(Off-the-record discussion) record read open court.

15

THE COURT: Go ahead.

16

Q. I would like to give you what is marked exhibit P-362, sir.

17

18

THE COURT: P-362.

19

MR. JACOBSON: Yes, your Honor. I understand this document is not in evidence now.

20

21

THE COURT: No.

22

MR. JACOBSON: I am offering P-362 in evidence.

23

MR. KATZ: I object under Federal Rules of evidence 403 and 602, lack of foundation.

24

25

THE COURT: I think this is a very classic business

1 record and I am going to let it in.

2 MR. JACOBSON: Thank you, your Honor.

3 Q. Mr. Woerth, you are familiar with expense reimbursement
4 reports that were used at ALPA when you were president?

5 A. Yes.

6 Q. And some reports were in use the an ALPA when you were
7 vice president before that?

8 A. I believe so, yes.

9 Q. Under ALPA policy, individuals who worked for ALPA and
10 incur expenses on its behalf can get reimbursed for the
11 expenses if they provide the reports plus documentation that
12 receipts and so on, showing what they expended it on, with
13 explanations of what the ALPA business purpose is. Correct?

14 A. Of course, yes.

15 Q. And that is the rule that you used and all of the
16 executives at ALPA had to follow, correct?

17 A. Yes.

18 Q. You recognize this document, P-362, as one such expense
19 reported?

20 A. Looks like an ALPA expense report.

21 Q. It has a cover which, as has a summary, showing the
22 amounts that were spent and signed by the person submitting
23 the report, correct?

24 A. Yes.

25 Q. There is an authorization line, right?

1 A. Yes.

2 Q. That means that somebody else has to review it and say
3 it is okay to pay?

4 A. Of course.

5 Q. And then following it are a number of receipts,
6 correct?

7 A. Yes.

8 Q. Small reports, and then also receipts as well, correct?

9 A. Yes.

10 Q. And this is the type of document that ALPA relies on
11 from its employees before it reimbursed them for expenses
12 they claim to have had for the company, right, for the union?

13 A. Yes.

14 Q. So this is a expense report dated January 8, 2002, the
15 statement date is December 29, 2001. You see that on the top
16 of the first page?

17 A. Yes.

18 Q. Now, let's look at the second page of this document. In
19 is a credit card item expense report. Do you see that? That
20 is what the caption on top is?

21 A. Okay.

22 Q. There is a list of type of expenses, explanation of
23 charges and totals. Do you see that on top?

24 A. Yes.

25 Q. Then underneath that there is a section to fill out

1 below for group meal expenses, do you see that?

2 A. Yes.

3 Q. Then you are supposed to list the persons in the group?

4 A. Yes.

5 Q. The airline, their last name, first name. And then if
6 there is an outsider, there is some type of information to be
7 provided?

8 A. Yes.

9 Q. So in this particular page, in the type of expense under
10 group meals, it references two lunches. See attached. Do
11 you see that?

12 A. Yes.

13 Q. And if you look in the date of the meal, it says 12/4
14 and 5.. Because there are two meals being reported?

15 THE COURT: Before that, it says breakfast, lunch,
16 dinner, lunch is circled.

17 Q. I meant to point that out. The one circled is lunch,
18 correct?

19 A. That is what it is.

20 Q. In fact on the line above it says two different lunches,
21 one on the 4th and one on the fifth?

22 A. Yes.

23 Q. And it shows a list of names. And the first one is you.
24 Correct? Duane Woerth?

25 A. Yes.

1 Q. The next one is Dennis Dolan?

2 A. Yes.

3 Q. And who is Dennis Dolan?

4 A. He was the he was the first vice president of the
5 Airlines Pilot Association.

6 Q. So in the ire arc key he is the person immediately after
7 you?

8 A. He is the second highest-ranking elected person.

9 Q. Next person is Jerome Mugerditchian?

10 A. Yes.

11 Q. We have talked about him before. What is his title
12 again?

13 A. Vice president of administration.

14 Q. Does that make him the third ranking person of the four
15 elected officers?

16 A. I believe that is correct.

17 Q. All right. And then the last one is John Feldvary, who
18 is, if I recall correctly, the fourth ranking person of the
19 four elected --

20 A. That's correct.

21 Q. So 1, 2, 3 and 4 of the top elected officials are all at
22 this lunch?

23 A. They are all at the convention.

24 Q. Right. It shows that you are both there for 12/4, and
25 12/5, both days, your lunches, right?

1 A. That is what that says. I only remember being at one
2 lunch. That is what it says.

3 Q. You only had one lunch at the convention?

4 A. I only remember one lunch with these people. I was at
5 the convention a long time with a lot of people.

6 THE COURT: You remember having lunch with Clark?

7 A. Oh, yes.

8 THE COURT: So this is reimbursement for that lunch.

9 A. It has two lunches.

10 THE COURT: It has Clark, one lunch only.

11 A. I see that.

12 Q. You the second lunch, John Clark?

13 A. Yes.

14 Q. 12/ 5 only. American Airlines?

15 A. Yes.

16 Q. You testified you had lunch with Mr. Clark at that
17 convention?

18 A. Sure.

19 Q. Now, let's turn to the next page. The next page is
20 receipt for the Paris, Las Vegas. Do you see that?

21 A. Yes.

22 Q. And it shows on December 4, the same day that one of the
23 lunches as reflected on the day before, it shows something at
24 the St. Louis Cafe. It has four names there for names, three
25 names for lunch.

1 A. Yes.

2 Q. Can't tell if that is 4 or 3.

3 THE COURT: What are you -- if I am looking at the
4 receipt, these are both for lunches.

5 MR. JACOBSON: Yes. There is more receipts, your
6 Honor. I am working my way down to it.

7 THE COURT: All right.

8 Q. And so there is a list of names there, and then on the
9 second day there is a list of five names for lunch. And one,
10 the second list, name on that list is John Clark. All right.
11 So this is the receipt backup, page 3 is the receipt backup
12 for the itemization on page 2, correct?

13 A. Yeah.

14 Q. All right. The next page has been redacted. Now, let's
15 go to the page, the American Express card page.

16 THE COURT: Feldvarie's page.

17 MR. JACOBSON: Yes, John Feldvarie's American
18 presents.

19 Q. You see there is one expense item that is not redacted
20 out. Can you expand that one, please. Thank you. Do you
21 see that?

22 A. Yes.

23 Q. For Smith and Wollenski, Las Vegas?

24 A. Yes.

25 Q. What is Smith and Wollenski?

1 A. A steak house.

2 Q. That is a December 6, 2001, charge?

3 A. That is what it shows, yeah.

4 Q. There for \$996.36.

5 A. Yes.

6 Q. Turn to the next one?

7 THE COURT: Was its food extra?

8 MR. JACOBSON: Extra bread sticks, your Honor.

9 Q. Next page. That is a copy of the one of the receipts on
10 the American Express page, everything else redacted out,
11 right?

12 A. Yes.

13 Q. Mr. Turn to the next page after that. On the left we
14 see the receipt, the number matching the number we just saw
15 before, the \$996.36. Correct?

16 A. Yes.

17 Q. And on the right it says dinner, 12/5/01.

18 A. Yeah.

19 Q. And it lists four names there, right?

20 A. Yes.

21 Q. Can you tell the jury what those names are?

22 A. My name, Duane Woerth, Dennis Dolan, Jerry Mugerditchian
23 and John Clark.

24 Q. John Clark had AAL after him?

25 A. Yes.

1 Q. That is the code used for American Airlines?

2 A. Yes.

3 Q. Turn to the next page.

4 THE COURT: Before you go off that page.

5 MR. JACOBSON: Yes, your Honor.

6 THE COURT: The cards that fall on the 6th, on 12/,
7 6/01- this says on top here 12/5/01-

8 Q. Let me ask the question I think that will clear that
9 up?

10 THE COURT: I would ask it. But right now it is
11 not clear that the handwritten notes are dealing with the
12 same thing as the charge, because the charge is apparently
13 made the next day.

14 Q. Mr. Woerth, did you ever have a dinner in Las Vegas that
15 goes out past midnight?

16 A. Have I?

17 Q. Yeah.

18 A. I probably guess I have.

19 Q. You think this is one of those dinners?

20 A. It might have been, but I don't remember. I thought we
21 had an early dinner but I don't remember.

22 Q. Someone is feeling that it is still December 5 but it is
23 after midnight when the card was run, the card will show the
24 six, although people think it is still being the fifth. Is
25 that correct, sir?

1 A. That?

2 A. Could happen, but like I said, my dinner of this memory
3 is much earlier, but that is my memory.

4 Q. Turn to the next page which is a expense, item expense
5 report similar to the one that was page 2 of this exhibit,
6 sir?

7 A. Yes.

8 Q. Notice on the first one we had the Judge pointed out
9 that the word lunch was circled?

10 A. Yes.

11 Q. You see here the word dinner is circled?

12 A. Yeah.

13 Q. It says the date of the meal is 12/6/01.

14 A. Yes.

15 Q. And it shows the same dollar amount as all the prior
16 numbers of that dinner?

17 A. Yes.

18 Q. It shows the list of attendance, right?

19 A. Yes.

20 Q. Again, it is you, Dennis Dolan, Jerry Mugerditchian,
21 John Feldvary, and John Clark of American Airlines.

22 A. Yes.

23 Q. All right. And do you recall whether the envelope of
24 authorization cards were given to Jerry Mugerditchian at the
25 lunch or at the dinner?

1 A. My recollection, it was at, in, and my only recollection
2 of John Clark at all, was at the lunch. That is the only
3 recollection I have of John Clark.

4 Q. Your recollection of a dinner could be faded by this
5 time, you think?

6 A. Not any worse than lunch.

7 Q. All right.

8 Q. I am going to show you a document that has been marked
9 as exhibit P-373.

10 THE COURT: P-373?

11 MR. JACOBSON: Yes, your Honor.

12 Q. Did you have a chance to glance at this?

13 A. I did.

14 Q. Turn to the third page, there is a list of cc's to this
15 letter?

16 A. Yes.

17 Q. You he will see the third name listed is your name?

18 A. Yes.

19 Q. And did you receive this letter, sir, in or around the
20 time it was sent, a copy of this letter?

21 A. I must have. I don't remember it, though, but I am sure
22 I did.

23 THE COURT: This would be pretty important.

24 THE WITNESS: Yes.

25 THE COURT: This is a pretty important thing?

1 A. I would think so.

2 MR. JACOBSON: I would move exhibit P-373 in
3 evidence, your Honor.

4 MR. KATZ: No objection.

5 Q. Let's look at the first page of this. This is a letter
6 on the TWA MEC letterhead?

7 A. Yes.

8 Q. Dated March 20, 2002?

9 A. Yes.

10 Q. It is addressed to the chairman of the National
11 Mediation Board?

12 A. Yes.

13 Q. The National Mediation Board is the entity we talked
14 about here at trial that is responsible for essentially
15 managing collective bargaining and union representation,
16 under the Railway Labor Act. Correct?

17 A. Yes.

18 Q. Let's look at the first paragraph. Can you read that
19 paragraph to the jury?

20 A. "As the duly elected union representative of
21 representatives of the TWA airlines LLC pilots as represented
22 by the TWA Master Executive Council, MEC of the Air Line
23 Pilots Association. We hereby submit our formal request for
24 an investigation into possible interferences by American
25 Airlines, Inc., management with a representational

1 certification. This request is made pursuant to the
2 representative election process ordered in 29 NMB number 36,
3 American Airlines, Inc., Trans World Airlines, Inc./ APA/,
4 ALPA, case number R 6867, file number C R 6736.

5 Q. Now, this complaint, you didn't help prepare this
6 complaint, did you, sir?

7 A. I don't believe so.

8 Q. And people at your ALPA National office didn't prepare
9 this complaint, correct?

10 A. I don't believe so.

11 Q. As prepared by the TWA MEC and whoever was helping them,
12 right?

13 A. Yes.

14 Q. Turn to the second page, you can see it is signed by
15 all of the officers and an elected representative of the MEC?

16 A. Yes.

17 Q. Eight people.

18 MR. KATZ: I object. That mischaracterizes the
19 record.

20 THE COURT: What mischaracterizes?

21 MR. KATZ: It wasn't signed by all of the members
22 of the MEC, your Honor.

23 MR. JACOBSON: I believe that is all that were left
24 of the MEC at this point, but I will ask you.

25 Q. Do you recognize those names as being the elected

1 officers and captains and first officer reps for TWA?

2 THE COURT: And the secretary treasurer, who I
3 don't think is elected.

4 MR. JACOBSON: It is an elected office, it has no
5 vote.

6 THE COURT: It has no vote but it is elected.

7 MR. JACOBSON: Both the chairman and vice chairman
8 and secretary are elected but have no vote.

9 A. Your Honor, I must admit I am confused here because my
10 understanding was by November of the previous year, the MEC
11 members themselves was only Mr. Rautenberg and Sally Young.
12 All, the others were no longer on the MEC.

13 Q. That was true for a period of two to three weeks,
14 correct, sir? Then they moved to two first officer, two
15 captain structure?

16 A. My time line of all the comings and goings, I don't
17 remember.

18 THE COURT: In any case, this letter is submitted
19 on behalf of the TWA airline LLC, MEC.

20 Q. Yes?

21 A. Yes. Yes.

22 Q. And the gist of the letter is that American Airlines
23 management, by entering into Supplement CC, with AMA, is
24 essentially interfering with ALPA's ability to run an
25 election to represent the AA pilots, would that be a fair

1 summary of it?

2 A. That seems to be their objective.

3 Q. Right. And the notion being that supplemental cc
4 provides such a windfall to the American pilots who had been
5 represented by APA, that it would put ALPA at a tremendous
6 disadvantage in becoming the representatives of the American
7 pilots in the future?

8 A. That seems to be their theory.

9 Q. All right. Did you take any action in response to this
10 request to the NMB?

11 A. I don't remember any action.

12 Q. All right, thank you.

13 MR. JACOBSON: Your Honor, I think I moved this in,
14 did I.

15 THE COURT: Yes, I have it marked in evidence.

16 MR. JACOBSON: Thank you very much.

17 THE COURT: Yes.

18 Q. I want to show you now a document that has been marked
19 as exhibit P-374.

20 Q. Do you recall receiving this letter?

21 A. Yes.

22 Q. Did you take any action in response to this?

23 A. I don't believe I did.

24 MR. JACOBSON: I offer this P374 in evidence.

25 MR. KATZ: I object. It is hearsay. It is filled

1 with /SEFPL serving statement statements that are not
2 factual. They are purely argumentative. Not admissible.

3 MR. JACOBSON: Can I can ask for questions in a
4 foundation, if you would like.

5 THE COURT: Before using this document ask him if
6 he knows anything about it. I mean, on the ground that he
7 received it -- do you remember receiving this letter?

8 A. If not this letter specifically, I remember him raising
9 the issue of him wanting all counsel. All I remember is he
10 wanted additional counsel. I don't remember this
11 specifically.

12 MR. JACOBSON: I will ask for foundational
13 questions.

14 THE COURT: Yes. This is all speculation,
15 theories, issues of conflicts which, you know, really, under
16 403 would be very confusing.

17 MR. KATZ: Yes, your Honor.

18 THE COURT: And not very relevant to this point.

19 MR. KATZ: I believe the Court addressed this at
20 the pretrial conference and the in limine motion.

21 THE COURT: I am not sure you couldn't ask about
22 the litigation, if he knows anything about it. But to use
23 him as a framework for sticking this in evidence, I am not
24 going to allow it, at least on the current basis.

25 MR. JACOBSON: I will ask more questions, your

1 Honor.

2 THE COURT: Go ahead.

3 Q. Mr. Woerth, do you recall that a pilot named Bud Bensei,
4 Leroy Bud Bensei?

5 A. Yes.

6 Q. And he was a TWA pilot?

7 A. Yes.

8 Q. A little bit older than you but somewhat your
9 contemporary?

10 A. Yes.

11 THE COURT: Taller than you.

12 THE WITNESS: Everyone is better looking, so we can
13 establish all that.

14 Q. I don't know if he is taller. I think they are both
15 very tall pilots.

16 And you recall that that he was a vocal opponent of
17 the supplemental cc, do you recall that, sir?

18 A. I actually recall that later rather than at the time.

19 Q. All right. Do you recall a situation in which he was
20 sued by the Allied Pilots Association?

21 A. I don't remember him being sued, no.

22 Q. No, you don't remember that?

23 A. No.

24 Q. Do you remember a lawsuit regarding the enforceability
25 of Supplement CC?

1 A. I don't remember a lawsuit.

2 Q. All right.

3 MR. JACOBSON: He doesn't remember a lawsuit.

4 THE COURT: Do you remember a lawsuit brought by
5 APA as the plaintiff against Bud Bense1 and a class of TWA
6 pilots as defendants.

7 A. I do not, sir.

8 Q. All right. Do you recall any requests by the TWA pilots
9 to have ALPA help defend them in a suit?

10 MR. KATZ: I object to that, your Honor.

11 THE COURT: If he doesn't remember the lawsuit, how
12 can he --

13 MR. JACOBSON: I thought he might have a request for
14 defense.

15 THE COURT: Do you remember a request for defense?

16 THE WITNESS: No.

17 MR. JACOBSON: I am done with those questions of
18 this witness on this issue.

19 Q. You recall that ALPA's role as the exclusive bargaining
20 agent for the former TWA pilots expired, right?

21 A. Sure.

22 Q. And you recall that that was on or about April 3rd of
23 2002?

24 A. Sounds about right.

25 Q. All right.

1 THE COURT: When that happened, then ALPA's
2 contract with TWA LLC expired by its own terms. Is that
3 correct?

4 THE WITNESS: That is my understanding, your Honor.

5 THE COURT: And who represented the former TWA
6 pilots.

7 THE WITNESS: After April 3rd.

8 THE COURT: After April 3rd.

9 THE WITNESS: Then the pilot, Allied Pilots
10 Association, represented their employment at American
11 Airlines.

12 Q. Now, on April 3rd of 2002, did you receive, excuse me.
13 Did the APA domiciles, any of the APA domiciles, pass
14 resolutions asking that the American pilots join ALPA, do you
15 recall that?

16 MR. KATZ: Objection, your Honor. This was
17 discussed at the pretrial conference, prior to the start of
18 the trial. All of these issues are irrelevant --

19 THE COURT: Come to sidebar.

20 (At sidebar)

21 THE COURT: Mr. Jacobson.

22 MR. JACOBSON: Yes, your Honor.

23 THE COURT: Assuming for the moment, I must admit I
24 don't have a specific recollection, but assuming for the
25 moment that one of the local, or some group of APA pilots,

1 passed a resolution expressing a desire to affiliate with
2 ALPA.

3 MR. JACOBSON: Yes.

4 THE COURT: And this was after April 3rd, 2002,
5 what relevance to this case.

6 MR. JACOBSON: Actually it is on April 3rd, 2002.

7 THE COURT: Let's assume, if that is the day that
8 the National Mediation Board ruled single carrier status,
9 isn't it? Do I have that?

10 MR. KATZ: You have that right --

11 MR. JACOBSON: Your Honor, it is highly relevant
12 because one person, a reasonable person, a reasonable juror
13 looking at the evidence would say, gee, on the first day that
14 they are free to now sign up because their formal obligation
15 to TWA is over, they would see that, resolutions were passed
16 by two of the five main domiciles and then he begins a visit,
17 a road show to all --

18 THE COURT: Who?

19 MR. JACOBSON Mr. Woerth, goes to all of the main
20 domiciles that, together are the homes for 95 plus percent of
21 the pilots, over the next several months. This would be a
22 reasonable inference from this, that this is not something
23 that --

24 THE COURT: What is the reasonable inference?

25 MR. JACOBSON: The reasonable inference is that they

1 are working the on he will Howard Attarian whole time.

2 THE COURT: What makes that inference reasonable?

3 MR. JACOBSON: Because prompts to have unions
4 added, to come on to your property don't pop up like
5 mushrooms after the rain. There is something there ahead of
6 time. It is a reasonable inference and I think more
7 reasonable to the contrary that the that the reason why these
8 resolutions are passed the day that ALPA is off the property
9 is because the authorization campaign and the other work ALPA
10 had been doing up to this point to bring them on board are
11 now continuing out in the open.

12 They were working at it quietly, behind the scenes,
13 because they weren't allowed to legitimately, now they can
14 legitimately so it comes out.

15 It is like, I mean, any reasonable person, you
16 know, you see a couple on the street one day being
17 passionate, you can assume it is reasonable to assume that
18 the day before they were as well.

19 THE COURT: The issue of the affiliation with, of
20 ALPA with APA precedes the point in time when the two unions
21 become adverse. They became adverse as a result of the
22 American acquisition. They weren't adverse before, they were
23 just two different union. They didn't have any dealings with
24 each other. And prior did that time, indeed you brought a
25 lot of it out, was that ALPA, and the APA saw, at least some

1 of the pilots, let me put it that way, saw a benefit of being
2 represented by ALPA, ALPA is a large organization, their
3 financial strength, their clout on the Hill, you know, the
4 resources that they could bring to bear on that issue.

5 Then you have TWA comes along, the American
6 agreement, that kind of thrusts them, in a semi adversary
7 role. In some sense, a direct adversary role.

8 And that goes along, and that adversary role
9 continues on the 3rd of April.

10 You try to get the jury to conclude that it is
11 proof that ALPA went into the tank during that period,
12 because they are now resuming what had been a policy before
13 the TWA acquisition was ever announced.

14 MR. JACOBSON: What we are trying to get the, than
15 /KOUKS, inference we are trying to get the jury to reach is
16 while they may have, for their public phase, stopped pursuing
17 it, the TWA American merger discussions, seniority list
18 merger discussions, that in fact they were continuing --

19 THE COURT: You ought to have a good --

20 MR. JACOBSON: I don't.

21 THE COURT: You have a good appeal issues.

22 MR. JACOBSON: I think it is an issue over on.

23 THE COURT: The Court of Appeals like to slap me
24 around ever now and then, makes them feel good.

25 MR. JACOBSON: I think it is highly persuasive

1 evidence. You see a man running at one end of the building
2 behind the building. You look at the other end, he is
3 running again, you can assuming he is coming out the other
4 side.

5 THE COURT: ALPA and APA are thrown into
6 adversarial positions by the American announcement. It is
7 not something ALPA planned or APA planned. It is just, ones
8 American decided to buy TWA, that took what was a budding
9 friendly relationship, preceding that, only by a couple of
10 amonths, budding friendly relationship, and a relationship
11 that the union itself was fostering to some degree. I mean
12 the APA was fostering. Now suddenly this comes, and they are
13 adversaries.

14 How they dealt with that is the issue in this
15 lawsuit. But to say that they went back on April 3rd, to a
16 policy they had had all along.

17 MR. FRAM: Your Honor, the conduct he is pointing
18 to is not ALPA's conduct. He is talking about the APA's.

19 THE COURT: The APA people now feel, reverting to
20 what they had felt before.

21 MR. JACOBSON: Your Honor, these are lengthy
22 resolutions, not just on one of the ALPA domiciles, APA
23 domiciles, but several. It is clearly in the hopper waiting
24 for the day that they can launch it. They launch it the
25 first day that ALPA is on the property, is no longer on the

1 property.

2 THE COURT: That is APA.

3 MR. JACOBSON: One can infer from that that they are
4 doing it because they had a coordination with ALPA.

5 THE COURT: No, no. That is the leap you make.
6 The reason that APA acted in a sense unlike most unions when
7 they were willing to consider affiliating with ALPA before
8 the -- was they saw some advantage, and there is another, an
9 earlier resolution that outlined what the advantages are. I
10 can't remember the date of it, but there was.

11 MR. KATZ: Back in 2000.

12 THE COURT: Yeah, back in 2000. Okay. That, those
13 advantages didn't go away, being part of the AFL-CIO, having
14 60,000 members, having 500, whatever the hell they had,
15 whatever think had, employees, and, you know, and the staff
16 of experts and things of that sort. That didn't go away.
17 Circumstances thrust them into adversity, not adversary,
18 adversariness with each other and indeed that is why we are
19 having this trial.

20 It is how ALPA dealt with that situation that is
21 relevant. And your cross brought out some very interesting
22 stuff on that as to what was going on while.

23 But to say that once the adversarial nature was
24 relieved because ALPA was an expression, off the property,
25 APA now wants to go back and do what it always wanted to do,

1 and to say that that is proof, they can draw an inference
2 that ALPA breached its duty of fair representation, went into
3 the tank.

4 MR. JACOBSON: That is too many steps, your Honor.
5 The only inference I want to get from this is that the reason
6 why APA domiciles are doing this is because they have been in
7 continuing contact.

8 THE COURT: Yeah, but where? They have been in
9 contact, introduce evidence this that they have been in
10 continuing contact.

11 But to say that there was no longer an adversarial
12 relationship, and they now gone back to take the position to
13 do what they what always wanted to do or at least many of
14 them wanted to do prior to --

15 MR. JACOBSON: Your Honor, the reference has been
16 that John Clark and Hunibell were collecting ALPA cards. He
17 has denied --

18 THE COURT: I let all that in.

19 MR. JACOBSON: He denied that that was an ALPA
20 thing, there private thing. The letter, according to the
21 resolution.

22 THE COURT: I thought your cross on that was very
23 important. I think the question of the card campaign going
24 on while the parties are in adversarial -- whether to what
25 extent, if any, ALPA sort of cooperated, or winked an eye at

1 it, is very directly relevant.

2 But once ALPA is off the property, and APA goes
3 back to doing what it has legitimate reasons to do and always
4 had legitimate reasons to do --

5 MR. JACOBSON: The resolution, though, is sent a to
6 ALPA directly from Mark Hunnibell, the same person who is
7 doing the card campaign seeking as you saw the evidence
8 seeking to be re I am buzzed by ALPA.

9 THE COURT: Mark Hunnibell always, from what I
10 gather, was in favor of ALPA.

11 MR. JACOBSON: Strongly so.

12 THE COURT: Clark was also in favor of ALPA. And
13 anything they did during, prior to April 3rd, 2002, I have
14 not in any way limited you. In any interaction they had,
15 even lunch, dinner, any interaction they had with Al, an ALPA
16 officials, I think is fair fodder.

17 MR. JACOBSON: The resolution --

18 THE COURT: For the --

19 MR. FRAM: It was mixed, your Honor.

20 THE COURT: For this case.

21 MR. KATZ: Mr. Jacobson.

22 THE COURT: This is a big leap. Even if it occurs
23 -- once the conflict, let's call it, is removed, the
24 adversarial nature is removed, because ALPA basically is
25 bounced off the American property, the fact that there are

1 pilots who wanted to do what they always wanted to do. I
2 mean, not always. But they wanted to do, there is a
3 movement, it started prior to American putting its --

4 MR. PRESS: Joe, were you intending to owe he.

5 MR. KATZ: Let me say --

6 MR. PRESS: I want to --

7 MR. KATZ: I haven't been able to say one word.

8 THE COURT: I have been dominating the
9 conversation.

10 MR. KATZ: I want to mention for the record that
11 the Court has reaffirmed its rulings on February 8, and on
12 June 2, when this issue was discussed in detail.

13 MS. RODRIGUEZ: That is not what the ruling was.
14 The ruling gave latitude through the month of April, there
15 was another document that came out post this document that
16 the Judge said came in. You are wrong there.

17 MR. KATZ: No, you are wrong.

18 MS. RODRIGUEZ: The date is not April 2. I forget
19 the date of the document, but it was a document post --

20 THE COURT: I am not relying on some prior ruling I
21 made. I am relying, I am analyzing what is right here before
22 me, it is affecting the jury. I think you are trying to make
23 an inference that it is, that is, that is not fair and is
24 misleading to the jury and goes to the concept of unfair
25 prejudice.

1 MR. KATZ: Thank you.

2 MR. PRESS: Can I make a point? One of these
3 resolutions was sent to ALPA on March 18, the my Al American
4 me resolution. We have the email. It was forwarded to
5 Captain Woerth. I don't know if you were intending to use
6 that. This provides context for that. It provides context
7 for why ALPA decided not to seek an election, which that
8 happened on the same day.

9 THE COURT: That is different. Nobody mentioned to
10 me you were talking about a draft resolution being forwarded
11 to ALPA on March 18.

12 MR. KATZ: If you want to ask him why ALPA didn't
13 seek an election, that is allowable.

14 THE COURT: I would allow that.

15 MR. JACOBSON: I am not asking your questions on
16 cross examination.

17 THE COURT: There was a period of time until they
18 were ruled a single carrier beings even though everybody
19 anticipated that was going to happen, until it was done, and
20 until the complaint of the TWA MEC committee about that's
21 correct which was just introduced, the explanation, why they
22 were objecting to it, I think they are adverse and to the
23 extent that the two unions are talking to each other or that,
24 he can bring out.

25 So the March 18, saying that they prepared, they

1 sent it to him in draft form, that is a fact. I don't know
2 that it is a fact.

3 MR. PRESS: Well, this will provide context for
4 that email.

5 THE COURT: No, no. Don't give me context.

6 MR. PRESS: I need to explain myself. Attachment
7 to that email is not there. It was produced to us in a
8 faulty state.

9 But the resolution is attached to this email.

10 THE COURT: In a faulty --

11 MR. PRESS: The attachment didn't accompany the
12 email ALPA produced to us. We got it later in this thing.

13 MR. JACOBSON: Just the cover sheet.

14 MR. PRESS: We got the email saying attached is a
15 merger resolution.

16 THE COURT: But that was March 18.

17 MR. PRESS: But the resolution itself is not an
18 attached.

19 THE COURT: Is there any doubt as to what that
20 resolution was? Do we have a doubt as to what was found?

21 MR. FRAM: An email to Duane Woerth.

22 MR. PRESS: No, to Rindfleisch and he forwarded it
23 to Duane.

24 MR. JACOBSON: It is in evidence through
25 Rindfleisch. The resolution wasn't attached it. It says

1 ALPA merger dot MIA.

2 THE COURT: How do you know what resolution was
3 attached?

4 MR. JACOBSON: We don't. It says ALPA merger.

5 MR. KATZ: ALPA produced whatever it had.

6 THE COURT: That is in evidence.

7 MR. KATZ: It was a very thorough search of ALPA's
8 electronic files.

9 MS. RODRIGUEZ: We know how thorough the search
10 was.

11 MR. KATZ: We produced everything that was there.

12 MS. RODRIGUEZ: Let's not go there.

13 THE COURT: Well, I am sticking to my ruling. At
14 the March 18 stuff, I think the merger of the two unions, it
15 was being sent when the matter was still open before the
16 National Mediation Board, possibly, things could have been
17 filed, things might have been done before the mediation board
18 acted.

19 MR. JACOBSON: I was planning on going into the next
20 letter which is where Mr. Woerth got the resolutions for
21 Miami and Dallas which were the following day, and then his
22 trip, visit goes these places.

23 THE COURT: No. No. That, to me.

24 MR. JACOBSON my question is are you going to rule
25 the same way on all of those.

1 THE COURT: Yes. Again, the date to me is
2 extremely important. Once the adversarial nature is removed,
3 and, I don't know whether, they are not there yet, they are
4 not part of ALPA's --

5 MR. KATZ: No.

6 MR. JACOBSON: Why don't we excuse the jury for five
7 or ten minutes. I will make an offer.

8 THE COURT: I will do that. .

9 (In open court.)

10 THE COURT: The lawyers would like to talk to me.
11 Can you blame them?

12 We have probably ten more minutes of legal matters
13 we have to go over. Rather than make you sit here and try to
14 over here us through the white sound noise, I will give you a
15 break now.

16 Please, do not discuss the case among yourselves.
17 Keep an open mind until you have heard all the evidence.

18 (Jury leaves the courtroom:

19 MR. JACOBSON: Your Honor, the documents we would be
20 offering a long this line of testimony, which you have
21 excluded at sidebar, would be plaintiff's exhibit P 148
22 UUUUU, that is five U's.

23 THE COURT: 148, 5 U's, there is a document with
24 that?

25 MR. JACOBSON: If you recall the huge binders of the

1 Rindfleisch emails by your clerk, those two huge binders, the
2 individual documents in that were separated out.

3 THE COURT: From A to 6 FFFFFFFF.

4 MR. JACOBSON: Yes.

5 THE COURT: That is like 26 by six. All right.

6 MR. JACOBSON: We pulled them out to make them
7 easier to handle.

8 THE COURT: 148, what is that again, four U's?

9 MR. JACOBSON: Five.

10 THE COURT: That is not a female sheep, is it?

11 MR. JACOBSON: It is the start of a herd.

12 MR. JACOBSON: There was an email from Mark
13 Hunnibell to Ron Rindfleisch, and a copy to John Clark.
14 Subject line was ALPA merger resolution under consideration
15 in Dallas, Fort Worth.

16 THE COURT: That is March 18.

17 MR. JACOBSON: April 3, 2002. March 18 document is
18 already in evidence, your Honor, through Mr. Rindfleisch's
19 deposition.

20 THE COURT: Go ahead.

21 MR. JACOBSON: This forwards a copy of the
22 resolution of the local -- the domicile, and, of why they
23 want to join ALPA and they include in their resolution a set
24 of conditions relating to TWA pilots. That the merger
25 agreements include that there be no attempts to alter

1 seniority integration agreements relate relating to TWA or
2 any other prior acquisitions slash merger. And then there is
3 other conditions, but that is the -- oh, and the defense
4 against litigation with intent or effect of altering any
5 prior seniority integrations.

6 Those are some of the conditions that the Dallas
7 Fort Worth group want.

8 THE COURT: We know why. They didn't want to lose
9 the benefit of Supplement CC.

10 MR. JACOBSON: I didn't suggest the Dallas pilots
11 were stupid in any way, your Honor.

12 The next document in the set would be a follow-up
13 email, dated April 4, 2002, at 8:38 in the morning, and that
14 is from.

15 THE COURT: April 4. How many X's after this.

16 MR. JACOBSON: P 148, five W's. And this is the
17 same document that was the prior exhibit but it is being
18 forwarded by Mr. Rindfleisch at 8:38 in the morning to people
19 including Ana McAhlen Schultz, Bob Christy, Clay Warner,
20 Duane Woerth, Howard Atterian, Jalmer Johnson, Ken Cooper,
21 Jonathan Cohen, Seth Rosen, Bill Roberts, and several others.

22 THE COURT: Forwarded by Rindfleisch.

23 MR. JACOBSON: Yes, forwarded by Rindfleisch.

24 THE COURT: Is that what he got on the 3rd.

25 MR. JACOBSON: Yes, same document.

1 THE COURT: Now he is in turn forwarding it to.

2 MR. JACOBSON: All the people up the ladder.

3 THE COURT: Up the chain.

4 MR. JACOBSON: Correction. This one has the Dallas
5 Fort Worth motion and also he attached to as well a similar
6 resolution by the Miami domicile, of APA.

7 And has the same, almost exactly the same language,
8 has the same conditions in it the Miami one does.

9 THE COURT: You mean Miami has the same condition
10 as Dallas Fort Worth.

11 MR. JACOBSON: Yes, your Honor. They they are very,
12 very similar.

13 THE COURT: Not surprising.

14 MR. JACOBSON: They appear coordinated.

15 The next document in this set is listed as P-148,
16 followed by six B's.

17 THE COURT: Do you understand that P 148 is in
18 evidence?

19 MR. JACOBSON: Yes, your Honor. But I think for
20 making the purpose of this record I think it is important to,
21 the specific pages, it is a huge exhibit. I hope when you
22 hear the recitation you may consider your decision.

23 THE COURT: P 148 was admitted on the 22.

24 MR. JACOBSON: Yes, your Honor. Without objection.

25 THE COURT: That is what I am checking. Nothing.

1 MR. PRESS: Your Honor.

2 MR. JACOBSON: Your Honor, these documents are
3 already in the case.

4 MR. KATZ: We will object now to anything after
5 April 3rd, on or after April 3rd, 2002. I thought that the
6 documents were limited to the period up to April 3rd, 2002.
7 But we object to any of these emails in 148. Following that
8 point in time.

9 MR. JACOBSON: Your Honor.

10 THE COURT: I have it right here. This was in
11 connection, I think, with the video of Ron Rindfleisch.

12 MR. JACOBSON: Yes, your Honor.

13 THE COURT: And I have that P, without objection,
14 P-146, 147, 148, and 149.

15 MR. JACOBSON: Yes, your Honor.

16 THE COURT: Were all admitted into evidence on my
17 master list I keep as well as my notes.

18 MR. PRESS: It is sitting right there.

19 MR. JACOBSON: The big stack next to the binders.

20 THE COURT: I have it in evidence.

21 MR. JACOBSON: The documents are in evidence. The
22 question is whether I can make inquiry of this witness
23 regarding these exhibits.

24 MR. FRAM: Your Honor, if I may, we had -- we
25 submitted our trial brief, we recalled this issue on June 2

1 in chambers.

2 Your Honor reaffirmed the previous ruling at the
3 pretrial conference that relevance for the purposes of this
4 case would end on April 3rd. So we had, we relied upon that.
5 I think we were surprised to hear that notwithstanding the
6 court's ruling in response to our trial brief, that portions
7 of the document are going into evidence. So we would move to
8 strike them and we would certainly object to any questions or
9 argument with respect to these issues, your Honor.

10 MR. JACOBSON: First of all the recitation of the
11 Court's order made by opposing counsel does not correspond
12 with our recollection of it. But in any case, the train has
13 left the station as far as the admissibility of this
14 document.

15 THE COURT: Well, one can always correct error
16 before it gets in too deep.

17 I think at this point the burden is on the defense
18 here to identify a document that they now say shouldn't be in
19 evidence. I think it is justified at this point. They are
20 in evidence. There was no objection. This is a very well,
21 thoroughly, this case, the discovery was very thorough so
22 when somebody doesn't object, I don't have the feeling that
23 it is ignorance, it is a position by counsel who know the
24 case inside out.

25 I am still, for questioning this witness, I believe

1 that actions by the APA, or for that matter, ALPA, with
2 respect to a possible merger of the two unions, even after
3 April 3rd, doesn't answer the question as to whether ALPA
4 went into the tank when it was representing the TWA pilots
5 from January of 2001 all the way into I think there was a,
6 some kind of arbitration decided at the end of April of 2002,
7 April --

8 MR. FRAM: Best efforts.

9 THE COURT: What?

10 MR. FRAM: It was the so-called best efforts
11 arbitration.

12 THE COURT: Best efforts. Yes. Until, once the
13 National Mediation Board ruled that ALPA was no longer the
14 carrier, which was April 3rd, 2002, we know that, was no
15 longer the union for the TWA pilots or for any pilots in the
16 TWA, American mix, the fact that the two unions started
17 talking merger again, and ALPA and I say that was a position
18 ALPA was taking long before anybody heard of American taking
19 over TWA. We had all the testimony about October, the
20 captains visit to address APA pilots, and I think that that
21 created some, to try to get the jury to draw the inference
22 that somehow or other the APA pilots doing what they always
23 wanted to do, at least what some of them wanted to do, some
24 of them wanted to do, is proof that ALPA went into the tank.

25 Now, I am told there was a, and it is in evidence,

1 that on March 18, APA and ALPA had communication about a
2 resolution, that should be in evidence. APA and ALPA were
3 talking to each other in March before they were single
4 carrier status. I think the jury should hear that. That may
5 be something as well, but I am sticking with my overall
6 ruling as to questioning this witness.

7 As to admissibility to rule on whether I should
8 allow or revoke the admission of P 148, you have to identify,
9 I am not going to go through 300 documents to try to figure
10 out what you are objecting to. If you object en masse, on
11 the theory if I object to everything if you object to
12 everything, what I don't want, I won't listen to that
13 either.

14 MR. FRAM: We understand.

15 THE COURT: You got to come up, you don't object
16 the first time. You got to come up, and I am not, that
17 doesn't say that I will agree with you, but you at least have
18 to be specific.

19 I don't want you to say we made a mistake on 123rd
20 documents, you know. You have got to show me why.

21 MR. FRAM: We will be specific.

22 THE COURT: I will read the documents, and --

23 MR. FRAM: Your Honor, I hope we understand your
24 ruling to also preclude any argument by counsel that event
25 after April 3rd or on April 3rd are relevant to their claims.

1 There was some questions asked before that about Mr. Bensel
2 and money he wanted to defend a lawsuit, that is not in this
3 case.

4 THE COURT: The lawsuit, if I am not mistaken, was
5 in February.

6 MR. FRAM: It was --

7 THE COURT: 2002. But the suit against Bud Bensel,
8 and it was a purported, I think it was supposedly a, they
9 were seeking a defendant class, I think, in that suit, were
10 they not?

11 MR. FRAM: They were.

12 THE COURT: They were seeking a defendant class of
13 TWA pilots or ex- TWA pilots.

14 MR. PRESS: True.

15 THE COURT: That was in February.

16 MR. PRESS: It was.

17 THE COURT: So how that was dealt with is within
18 the timeframe, clearly within the timeframe of this case.

19 MR. FRAM: It is, but the concern there, your
20 Honor, is that that is not a claim. There is no DFR claim in
21 this case alleging that ALPA breached its duty by failing to
22 support them.

23 THE COURT: You know you can't have it that
24 tightly. Their attitude towards -- by ALPA, ALPA for
25 assistance might bear on the issues.

1 MR. FRAM: Your Honor, we have very detailed
2 proposed findings of fact for both sides.

3 THE COURT: There is a jury here. I don't make
4 findings of fact.

5 MR. FRAM: No, your Honor.

6 THE COURT: That is why the jury is here.

7 MR. FRAM: The contested facts in the joint final
8 pretrial, your Honor, are supposed to limit the proofs at
9 trial and there is nothing in those to suggest that there was
10 bad faith or misconduct with respect to the failure of ALPA
11 to defend Bensel. Of course Ben Bensel to the extent he
12 incurred fees individually is not --

13 THE COURT: So far I haven't heard anything about
14 that suit that I thought should be in this. And whether it
15 is in this, the detailed, Fred Lacey's gift to the District
16 of New Jersey, the --

17 MR. FRAM: The final pretrial.

18 THE COURT: -- the monstrous final pretrial with
19 300 contested facts is no surprise to anybody. I assume it
20 is no surprise to anybody. Everybody knows all about it.
21 And I would allow the testimony of what ALPA's reaction is,
22 which I did, I do. The testimony is they, I think Captain
23 Woerth said that. Didn't he say they never, he said he never
24 even heard of the suit.

25 MR. JACOBSON: He did not recall the suit.

1 THE COURT: That ends that.

2 MR. JACOBSON: I stopped asking questions about
3 that.

4 Your Honor, on the offer of proof, what I would
5 anticipate eliciting his testimony if I were permitted to do
6 so, was that the day after ALPA was off the property, Mr.
7 Woerth, along with other top officials at ALPA, received the
8 resolutions of the Miami and Dallas Fort Worth domiciles of
9 American Airlines.

10 THE COURT: The inference you want to draw from
11 that is because the it happened the next day or four days
12 later or twelve days later was that ALPA went into the tank,
13 which is the issue in this case.

14 MR. JACOBSON: And the additional evidence I would
15 solicit from him is that over the course of succeeding
16 months he in fact personally visited the five main domiciles
17 owe on.

18 THE COURT: That was the policy before American
19 ever appeared.

20 MR. JACOBSON: I am making my offer of proof of what
21 the evidence would show.

22 THE COURT: They can slap me around again. That is
23 what we have the Third Circuit for.

24 MR. JACOBSON: He visited the domiciles to, in his
25 words, document the road show to sell ALPA to the members.

1 THE COURT: I have no doubt that.

2 THE COURT: I have no doubt that, at least for a
3 while, after they became a single carrier, that ALPA was
4 trying to get APA, into --

5 MR. JACOBSON: The evidence will show that, yes.

6 THE COURT: I don't doubt that. I don't doubt that
7 the evidence will show that. But to make that, to say that a
8 policy was in place before American ever appeared on the
9 scene, when there was no American -- there was an American
10 but they weren't buying TWA, and then the acquisition thrust
11 the two unions into conflict, but when the conflict was
12 removed, when single carrier status was ruled upon on April
13 3rd by the National Mediation Board.

14 Now, for instance, any testimony about how ALPA,
15 whether ALPA list resisted that application, I think that is
16 all admissible. I think how they reacted to it, single
17 carrier application was pending for quite some time. It was
18 pending.

19 MR. KATZ: Yes, your Honor, from November 9 --

20 THE COURT: Four months, whatever it was. Whatever
21 ALPA did during that period with respect to that application
22 I think is relevant. And I think arguments might be made
23 from that. But once the conflict is removed, the conflict
24 between the two unions is removed, the fact that Alpha goes
25 back to doing what it wanted to do before American ever

1 showed up on the scene, you know. Now, I will look at, right
2 now, where we stand, is those documents are in evidence. We
3 will see what the defendant does. And I am not going to let
4 you question this witness.

5 MR. JACOBSON: There are two other documents that I
6 would offer along this line.

7 THE COURT: Sure.

8 MR. JACOBSON: One was --

9 THE COURT: You don't mean offer. You mean that
10 you want.

11 MR. JACOBSON: In my offer of proof.

12 THE COURT: Right.

13 MR. JACOBSON: One was P-253.

14 THE COURT: 253. What is that?

15 MR. JACOBSON: That is the address by ALPA president
16 Duane Woerth at the Dallas Fort Worth domicile meeting on
17 Friday, August 2, 2002.

18 THE COURT: That is not, that is not in evidence.

19 MR. JACOBSON: That is not in evidence. But there
20 is a portion of his statement that I would like to ask him
21 about, even notwithstanding your ruling, and that is on the
22 third page of this document, he talks about how ALPA handles
23 difficult negotiations. He says, I will read the quote.
24 This is the thing I was going to go into. Quote, we are
25 going to probably have over 500 staff members by end of this

1 year, and they are probably our greatest strength. They are
2 the depth of the organization. They are transportable. That
3 is to say they are interchangeable. When we have a crisis as
4 a big negotiation that is going on, whether it be American or
5 Delta, we bring in the A team. We don't leave anything
6 behind. We bring in the top guns, and John Malone can attest
7 to this as he has Seth Rosen at his time. He is our number 1
8 contract negotiator over 30 years, negotiated more contracts
9 with pilots than any other person in history.

10 And I would read him that and I would ask him why
11 didn't we get the A team. Why didn't TWA get the A team? I
12 would like permission to read that portion?

13 THE COURT: You said he didn't get the A team?

14 MR. JACOBSON: We didn't get Seth Rosen. We got
15 Holtzman.

16 MR. KATZ: From this --

17 THE COURT: Holtzman ain't going to like to hear
18 this.

19 MR. KATZ: This is from an August 2, 2002,
20 document.

21 THE COURT: Okay. You are offering it. I am
22 sticking to my ruling.

23 MR. JACOBSON: But that --

24 THE COURT: For a couple of reasons. First of all
25 the passage of time, he is trying to sell ALPA to APA. Who

1 is the A team, and who isn't the A team. Why didn't we get
2 the A team? There were a lot of advisors floating around,
3 some of them were pretty strong.

4 MR. JACOBSON: The other exhibit, your Honor, would
5 be P-254.

6 THE COURT: What?

7 MR. JACOBSON: The other exhibit on that line.

8 THE COURT: 254?

9 MR. JACOBSON: Yes.

10 MR. KATZ: What is the date on that?

11 MR. JACOBSON: That is the notes from owe on.

12 THE COURT: It is December 9, '02.

13 MR. JACOBSON: That's correct.

14 MR. KATZ: Thank you.

15 MR. JACOBSON: Mr. Woerth's comments to the APA
16 domiciled at LaGuardia that day.

17 THE COURT: Right. They are actually meeting
18 notes.

19 MR. JACOBSON: Yes. They include his comments.

20 THE COURT: Yes. I am sticking --

21 MR. JACOBSON: I understand.

22 THE COURT: I am sticking to my ruling.

23 MR. JACOBSON: I wanted to complete my offer of
24 proof and I have --

25 THE COURT: That is fair. And I want to also say

1 that until I, because 148 was in without objection, I am
2 going to have to review those documents very carefully. I
3 don't know if that will change my view.

4 MR. KATZ: Yes, your Honor. We will file a motion
5 to strike or raise a motion to strike. They are in
6 chronological order so at the point in time --

7 THE COURT: I want to tell you this. I want to
8 make it clear, before I do, I want your commitment that if
9 Captain Woerth has to come back because I do something based
10 on my review of the document, that you have to bring him back
11 and make him available for further cross examination. I am
12 not going to let him leave this courtroom when the issue of
13 those things are still, and I don't have them.

14 MR. KATZ: Yes, your Honor. We will take that.

15 THE COURT: Captain Woerth, do you understand that?

16 A. Yes, your Honor.

17 THE COURT: You might have to come back in five
18 days or something.

19 THE WITNESS: I want to just tell the Court, I need
20 to vote tomorrow. I can't do it tomorrow but I will come
21 back any time --

22 THE COURT: I don't know if it will be tomorrow.

23 A. I am not available tomorrow, your Honor.

24 THE COURT: Vote on what?

25 THE WITNESS: About 15 items of interest to the

1 United States.

2 THE COURT: Oh. Is tomorrow election day?

3 A. I represent the United States at the ICAO.

4 THE COURT: You mean in Montreal?

5 THE WITNESS: The voting in Montreal.

6 THE COURT: At the international -- right. Oh,
7 that is an important. You should be there.

8 THE WITNESS: Thank you..

9 THE COURT: We will accommodate your schedule. I
10 just want to make it clear that at some point, next week or
11 so, we will get his answer, that I may decide that some of it
12 will stay in.

13 MR. KATZ: That is understood, your Honor.

14 THE COURT: Okay. Now, can we resume cross
15 examination.

16 MR. JACOBSON: I have more questions. Can we take a
17 three or four minute break?

18 THE COURT: Let's do this. I have roughly 20 to
19 12. Let's go to ten of 12. 12 minutes.

20 MR. JACOBSON: Thank you.

21 (Recess)

22

23

24

25

1 (Jury enters the courtroom.)

2 DUANE WOERTH, resumes.

3 CONTINUED CROSS EXAMINATION.

4 BY MR. JACOBSON:

5 THE COURT: Mr. Jacobson, you can continue.

6 MR. JACOBSON: Thank you, your Honor.

7 Q. Now, Mr. Woerth, your secretary back in 2002 was Ursula
8 Reichstein, is that correct.

9 A. Yes.

10 Q. Do I pronounce that correctly?

11 A. No.

12 Q. How do you pronounce it?

13 A. Ursula Reichstein.

14 THE COURT: You asked.

15 A. Ursula Reichstein.

16 Q. And when you would get emails she would print them out
17 for you?

18 A. Typically.

19 Q. All right. Did you print out your own emails, relied on
20 the secretary?

21 A. No, I relied on them to send them out.

22 Q. I would like to direct attention to March 18 of 2002,
23 and to make it a little bit easier for you, this is a while
24 ago, I want to give you exhibit P 31?

25 Q. You have before you P 31?

1 A. I am there.

2 Q. It is an email that is forwarding a document. Correct?

3 A. That is what it purports to do.

4 Q. It is from Ron Rindfleisch?

5 A. Yes.

6 Q. It is addressed to a number of people at ALPA National
7 headquarters. Correct?

8 A. Yes.

9 Q. And that would include Ana McAhren Schultz who was your
10 head research person, correct?

11 A. She was the Director of Economics and Financial
12 Analysis.

13 Q. Bob Christie. Clay Warner. You. Howard Atterian.
14 Jalmer Johnson, Jonathan Cohen. Ken Cooper. Seth Rosen.
15 Fill Roberts and other people who I haven't haven't
16 mentioned, correct?

17 A. Yes.

18 Q. And the subject is ALPA merger MIA document. Correct?

19 A. That is what it says.

20 Q. Now, in the pilot lingo, MIA doesn't refer to missing in
21 action. It refers to Miami. Correct?

22 A. That identifier for Miami.

23 Q. And you know that the Allied Pilots, American Airline,
24 has a large domicile in Miami?

25 A. Yes.

1 Q. You have been there?

2 A. Of course.

3 Q. All right. And the importance of this document is high?

4 A. Yes.

5 Q. The sensitivity is confidential?

6 A. Yes.

7 Q. And the attachment is ALPA merger, MIA documents. Do
8 you see that?

9 A. I see that.

10 Q. All right. And you received that document?

11 A. I don't remember this document.

12 Q. All right. The name on top showing who printed it.

13 That Ursula?

14 A. Yes.

15 THE COURT: Herndon is the location.

16 Q. Herndon is where the ALPA main offices are in Virginia,
17 Herndon?

18 A. We have offices, I usually work downtown, but we have
19 offices in Herndon.

20 Q. That is where most of the staff is?

21 A. That's correct.

22 MR. JACOBSON I would like to offer exhibit P 31 in
23 evidence, your Honor.

24 MR. KATZ: Your Honor, I object. He doesn't
25 remember receiving the document.

1 THE COURT: He is addressed in it and it is printed
2 out by his secretary. There is no indication of lack of
3 genuineness. I think the jury should be allowed to hear that
4 an ALPA merger document was received. I am going to allow
5 it.

6 Q. And Mr. Woerth, in fact, back there on March 18 of 2002,
7 at 8:56 in the morning or so, Ron Rindfleisch forwarded to
8 you and the other ALPA executives a document he receives from
9 the American airline pilots based out of the Miami domicile,
10 a resolution to merge with ALPA. Correct?

11 A. That is what this document is.

12 Q. And on March 18 of 2002, ALPA was still the certified
13 exclusive bargaining agent for the TWA LLC pilots?

14 A. Yes, we were, for two more weeks.

15 Q. All right.

16 THE COURT: You I you didn't know then --

17 A. No, I didn't.

18 THE COURT: Turned out it was.

19 A. Correct.

20 Q. Turned out it was two more weeks?

21 THE COURT: You didn't know that then.

22 THE WITNESS: That's correct, your Honor, no.

23 Q. Did you know Sean Clarke, a different first name, not
24 John Clark, but Sean Clarke?

25 A. I am not putting it, in context, I don't remember Sean

1 Clarke.

2 Q. Did you ever go out to dinner with Sean Clarke that you
3 can recall?

4 A. I can't remember who Sean Clarke you are talking about
5 is. I am not associating the name or place or person with
6 Sean Clarke.

7 Q. All right, thank you. Now, the master executive you
8 chairman of an MEC, and ALPA, is referred to sometimes as
9 being ALPA on the property. Is that a phrase that is used?

10 A. I completely don't, I don't, I didn't understand --

11 Q. I think I garbled it up. I am sorry. Have you ever
12 heard the phrase ALPA on the property, or ALPA on the ground,
13 to refer to the role of the master executive chairman of the
14 MEC?

15 A. I haven't heard that phraseology, no.

16 Q. All right. Is the master executive chairman is a member
17 by virtue of being that office, of one of the three main ALPA
18 National boards, right?

19 A. He is a member of the executive board. All MEC chairman
20 are members of the executive board, yes.

21 Q. And the executive board are the ones who sort of are the
22 first revisers of policy, they suggest the policy that have
23 been adopted by the board of directors?

24 A. The counsel normally suggests policy. The executive
25 boards can adopt certain kinds of policies and at a certain

1 level they have to send it to the full board of directors.

2 They are our second highest-ranking governing body, yes.

3 Q. All right. So with you been being the president, Bob
4 Pastore and those like him would be sort of equivalent of
5 senators or Congress men, correct?

6 A. I don't -- well, I guess the board of directors I
7 referred to as Congress, so maybe we could call the execute
8 difference board the Senate. I am not sure if it is a
9 perfect fit but I get your point. They are a legislative
10 body.

11 Q. They are important legislative officials within the
12 structure of ALPA?

13 A. Yes, as individuals and as a collective body. Very.

14 Q. Thank you. And communication between the members on the
15 local level at MEC, and National ALPA, is normally supposed
16 to be directed through the MEC chairman. Correct?

17 A. Well, members are free to communicate with whoever they
18 want to communicate with.

19 Q. I should rephrase it. Communication from ALPA National
20 down through the MEC, is normally directed through the MEC
21 chairman?

22 A. I think very many communications go through the master
23 chairman, but a president is free to communicate with any
24 member or any body or any group of bodies that he wishes to.

25 Q. Very good. Thank you. All right.

1 Now, in your direct examination you said that ALPA,
2 APA's merger policy had always been an impediment to APA
3 rejoining ALPA because of the no arbitration provision and,
4 that, and things like that. Do you recall that testimony?

5 A. Yes.

6 Q. All right. How long was always in that context?

7 A. My understanding, I became, left the airport in 76, got
8 hired in 1977 and as long as I can remember even thinking
9 about these sorts of questions, that was, my entire life in
10 the airline industry, that was my understanding, why APA was
11 gone and one of the reasons why they weren't coming back.

12 Q. Isn't it fact you also testified that the no arbitration
13 provision was not added with the APA's contract with American
14 until 1997?

15 A. No arbitration clause but ALPA's merger policy
16 notwithstanding, even if they didn't have a contract, they
17 didn't like, my understanding was they didn't really see
18 them selves as being willing to split to arbitration. That
19 was my understanding, of the attitude of the average American
20 pilot.

21 Q. But you you agree that the no arbitration provision was
22 not added in your contract until 1997?

23 A. And that is what I believe to be true. I can't verify
24 that.

25 Q. So no arbitration provision would could not have itself

1 be an impediment to rejoining prior to that, could it?

2 A. I don't understand the question.

3 Q. The no arbitration clause wasn't added to their contract
4 until 1997, then it could not have been an impediment to
5 having APA rejoin ALPA as you said earlier?

6 A. The impediment wasn't APA's policy. The impediment was
7 ALPA's policies which did provide for arbitration. They
8 weren't worried about their policies. To join ALPA they
9 would be subject to our policies which did have an
10 arbitration.

11 Q. I see. You said did you not respond to Roland Wilder's
12 written request for a lawsuit because it was made by him and
13 not bypass tore. Do you recall that?

14 A. Yes.

15 Q. You never told Wilder or Pastore that you needed a
16 letter signed bypass tore before you respond, do you?

17 A. I don't remember what the response was.

18 Q. You didn't respond at all?

19 A. It became moot, as I understand it understood it.

20 Q. You didn't tell Mr. Wilder thank you for your letter.
21 Could you please have Bob Pastore sign it and send it back
22 in. Did you?

23 A. Why would I?

24 Q. You didn't call Pastore and say I got this letter from
25 your lawyer who said I have been asked by you, Pastore, to

1 have ALPA authorize the lawsuit, but I have to get the letter
2 from you directly.

3 You didn't tell Mr. Pastore that either?

4 A. I don't believe I did.

5 Q. All right. Now, you told the APA board you say on April
6 5 of 2001 that a stapling was unacceptable and morally
7 reprehensible?

8 A. Yes.

9 Q. Do you still believe that today?

10 A. The whole staple of the entire seniority list, yes.

11 Q. Now, you also said that the October 2 thousand one time
12 frame after you got a letter from Mr. Brundage which your
13 lawyer put in evidence that you called Bill Compton, the TWA
14 CEO to talk about the situation. Do you recall that?

15 A. Refresh me on the timeframe.

16 Q. October, 2001?

17 A. Yes.

18 Q. That is your testimony?

19 A. That I talk to Thompson in 2001.

20 Q. Right. And he is a CEO of TWA?

21 A. I believe I he was.

22 Q. Do you know the name Bob Baker?

23 THE COURT: Baker? What?

24 Q. Baker as in making bread.

25 THE COURT: As in making bread. Okay.

1 A. Bob Baker, I knew, was an executive at American
2 Airlines. I am not sure if that is the same Bob Baker.

3 Q. Was he the vice chairman of AMR and CEO. TWA LLC?

4 A. I knew I was vice chairman of American. I didn't know
5 what his role was at the TWA LLC.

6 Q. You didn't realize that he, Baker, not Compton was the
7 CEO at that point.

8 MR. KATZ: What point of time are you talking
9 about?

10 MR. JACOBSON: October, 2001.

11 A. I am not sure what difference it made, what his job was.

12 Q. Because you indicated you called him because he was the
13 CEO. That is why I was asking you?

14 THE COURT: After April 10, 2001, TWA was operating
15 as a subsidiary of American, right TWA, LLC.

16 A. It was, your Honor. I think what counsel is trying to
17 ask me, when I called Bill Compton, I am calling Bill
18 Compton. If I incorrectly referred to his title as President
19 and CEO of TWA LLC, I didn't care what his title was. I was
20 talking to Bill Compton, who I thought knew something that
21 was going on about the negotiations. I wasn't trying to call
22 a CEO. I was trying to call Bill Compton.

23 THE COURT: What interest did Compton have after
24 LLC was operating and clearly American people were designees
25 were running it, whoever they were, what interest did Compton

1 have in the ongoing integration dispute?

2 THE WITNESS: My belief --

3 THE COURT: He was an officer in what was now a
4 bankrupt company in Chapter 11.

5 A. I wasn't calling, your Honor, like in an official
6 capacity addressing someone who is representing -- I was
7 trying to understand what was going on in October, and I
8 thought Bill Compton was the type of individual that still
9 had contact with the pilots, who had a lot of influence
10 around there, who might shed some light on to me, what,
11 meetings were happening, meetings were not happening.

12 THE COURT: He really wasn't in the loop at that
13 time. If TWA LLC is operating under Americans umbrella,
14 TWA, Inc., the original TWA is, presumably in the process of
15 winding up its bankruptcy, distributing its assets out of
16 bankruptcy, in fact, liquidating, and I am trying to figure
17 out what, why he would even been in the loop as to what is
18 going on on the pilot integration front. I can see why
19 American is concerned, I can see why the APA is concerned, I
20 can see why ALPA is concerned. But I can't see where TWA,
21 Inc., is concerned. Maybe I am wrong.

22 A. Your Honor, I was, I placed a call, I might be
23 completely wrong in all of my assumptions. Maybe he would
24 know nothing and contribute nothing. I testified that I did
25 reach out to him to talk to him in the hope of getting

1 information. I am not sure if I learned anything from the
2 call or not. I am just testifying yes, I did talk to the
3 man. That is all I am saying.

4 THE COURT: Okay.

5 Q. Now, you also said in October, 2001, you believed that
6 the CEO of American, Mr. Carty, could still walk away from
7 the deal somehow. Do you recall testifying to that?

8 A. I believed he could terminate TWA LLC if he chose to.

9 Q. And he?

10 THE COURT: I am sorry. What do you mean by
11 terminate?

12 THE WITNESS: I mean if he, if the whole thing
13 didn't turn out under the process that they thought they had
14 agreed to, that is without an arbitration, and if Congress or
15 litigation or by any means an arbitration was imposed upon
16 them, I believed Mr. Carty believed he had the right, and had
17 promised APA they would never submit themselves to that, so
18 there is some risk that he may decide I am not going to do
19 TWA LLC any more. I will try to sell the assets at some
20 point.

21 What I thought, what I believed was important to
22 him, was preserve the relationship with APA, no matter how
23 ill founded, I didn't like what they were agreeing to, but he
24 would not proceed and conclude and integrate into American
25 Airlines the pilots of TWA if there was an arbitration. That

1 is what I concluded.

2 THE COURT: Okay.

3 Q. All right. Now, in fact, you know that American
4 Airlines, AMR, had spent approximately 750 million dollars on
5 TWA. Acquiring it. Correct?

6 A. I didn't know the exact number. I knew they had to put
7 many levels of money in because it was losing so much money.

8 Q. They paid money for those assets, right?

9 A. Yes.

10 Q. The assets included something like 170 airplanes, most
11 of them knew, right?

12 A. I don't remember the numbers. I know whatever TWA was,
13 they got it all.

14 Q. They got it all. The slot restricted gates in the
15 airports that everybody was trying to get, right?

16 A. They got everything. Yes.

17 Q. And you know they also assumed about two billion dollars
18 from debt, right?

19 A. Yes.

20 Q. And they also were well in the way of process of
21 spending another 750 million dollars in integration costs to
22 interest grace the TWA operations into the American Airline
23 operations?

24 A. If you say so. I don't know what the numbers were.

25 Q. Well -- all right. Well, you have whole research

1 group, you are always keeping on top of what all the airlines
2 are doing financially, right, at ALPA?

3 A. Ten years ago I had a pretty good grip on what the
4 numbers were. I don't know if I have a grip today.

5 Q. If you add those numbers up, that is about three and a
6 half billion dollars. Are you seriously saying that if
7 Congress passed a law requiring arbitration among seniority
8 groups, that couldn't resolve it through negotiation, that
9 Mr. Carty, who was taking a great deal of personal
10 responsibility for this transaction, would shut it down and
11 walk away from all of that?

12 A. I know what Mr. Carty, sir, said to Senator Kit Bond. I
13 know what was reported he said. I know what was reported he
14 said to Senator -- to the secretary of transportation, Norm
15 Mineta, what Norm Mineta reported to me. And that
16 conversation said he would. So either he lied to Senator
17 Mineta or, Department of Transportation Mineta or Mineta lied
18 to me, but that is what he said.

19 Q. You found that to be a credible threat then that wasn't
20 worth testing?

21 A. Worth testing? He said it. I think there was a risk
22 that should be considered.

23 Q. Now, you talked about the participation at the Mayflower
24 hotel meeting of act 20 to 22. Do you recall that?

25 A. Yes.

1 THE COURT: I am sorry, the date.

2 Q. October 20 to 22 of 2001, your Honor. In fact, there
3 was an exhibit that you put in evidence through your lawyer,
4 exhibit D 88, which I believe are the minutes of that
5 meeting.

6 Now, in your testimony you stated that there was a
7 better deal offered by APA that day, correct?

8 A. I was aware what I thought was a better offer.

9 Q. And you said that in particular that that better offer,
10 that better deal, offered furlough protection for TWA pilots?

11 A. It is my understanding that the offer included furlough
12 protection, a St. Louis cell, a number of items. I don't
13 remember all of them. Whatever it was it was better than the
14 other offer.

15 Q. I am asking you about the furlough protection in
16 particular?

17 A. I thought there was furlough protection.

18 Q. Of course furlough protection isn't something that the
19 APA's, the union, can grant. That is only something the
20 employer, American Airlines, can grant?

21 A. Correct.

22 Q. I want to address briefly, I hope briefly, the Eastern
23 Airlines situation that you mention order direct examination.
24 All right, sir? Would you agree with the statement that in
25 the 1980s and 1990s that Frank Lorenzo was probably the

1 biggest enemy of pilots in the pilot union?

2 A. Yes.

3 Q. He was the person who owned Texas Air, then he bought
4 Continental Air, then he bought Eastern Airlines, correct?

5 A. He had two strikes, pilot strikes, with Frank Lorenzo,
6 Continental and Eastern.

7 Q. He was very anti union and attempted to bust the union
8 in both places, right?

9 A. Yes, he was.

10 Q. In connection with Eastern airline, the original strike
11 actually did not involve the pilots, it involved the
12 mechanics, the IAM, correct?

13 A. The machinists went on strike, yes.

14 Q. And the key to whether or not Lorenzo could, actually he
15 locked them out, didn't he?

16 A. I don't recollect if he locked them out as a strike.

17 Q. But whichever way, the Eastern pilots decided to strike
18 in sympathy with the mechanics?

19 A. That was their decision, yes.

20 Q. And in fact, the Eastern pilots and ALPA as a whole was
21 willing to shut down Eastern, if necessary, put it out of
22 business, if necessary, to stop Lorenzo's union rampage?

23 A. We supported the strike. We supported Eastern pilots.

24 Q. Right. Were you willing to support them to the point of
25 the airline shutting down if necessary?

1 A. That would be the Eastern pilots' decision, not the rest
2 of the pilots' decision.

3 Q. But you were supportive of that?

4 A. We would support the Eastern pilots with their object.

5 Q. All right. Sometimes the pilots refer to it as burning
6 the airline down, if they needed to. Do you recall that
7 phrase being and?

8 A. Phrase of that or similar.

9 Q. In fact, Eastern went out of business as a result of the
10 strike, right?

11 A. Yes, they did.

12 Q. Okay. And although many pilots were hurt by that,
13 losing their jobs, ALPA celebrates the event as being a key
14 step of showing the reassertion of their power and their
15 ability to assert themselves against management?

16 A. I think that is a gross mischaracterization. You don't
17 celebrate the disaster of losing Eastern Airlines. That is
18 never celebrated, sir.

19 Q. Maybe that is the wrong word. You hold that as showing
20 something we are able to, if need be, take it to the end in
21 order to preserve the interest of all the pilots?

22 A. I don't think that was the message of Eastern strike,
23 which, and the shutdown of Eastern Airlines was a tragedy,
24 and we think we view it that way. I think it did show what
25 the Eastern, what the Eastern strike showed, the Continental,

1 united and Eastern strikes, when we created major contingency
2 fund we were showing that we will put resources, we will
3 assess ourselves. We will make pilots pay special an
4 assessments. We will fight an aggressive union busting
5 effort.

6 And unfortunately, Lorenzo took it to the end and
7 destroyed an airline rather than negotiate.

8 Q. ALPA stood strong, in fact, all the members were
9 assessed based on the percentage of their respective income
10 to provide a strike fund for the Eastern pilots?

11 A. For strike benefits.

12 Q. They were on strike for a year, a little bit more?

13 A. A very long time.

14 Q. Once Eastern went under, there was a question what to do
15 with all the pilots who were now out of work, right? Do you
16 recall that situation?

17 A. The pilots were out of work, it is a question for
18 everyone, I am not sure what you mean by ALPA.

19 Q. All right. But isn't it a fact that under ALPA's,
20 fragmentation policy, ALPA made efforts to bring these
21 pilots on board at various ALPA affiliated carriers, carriers
22 where union property, with their seniority, do you recall
23 that?

24 A. There were efforts made to get Eastern pilots hired. I
25 don't remember any effort anywhere to get them with their

1 seniority.

2 Q. Isn't it a fact United Airlines hired 600 former Eastern
3 pilots with full seniority, about 300 in the training center
4 in Denver and the other 300 scattered throughout the airline?

5 A. I didn't realize they were integrated. I thought they
6 were hired as new hires.

7 Q. Do you recall this quote from the ALPA president, Hank
8 Duffy. Quote. "A willingness to share seniority is not only
9 the moral way to operate, even though it may impinge upon
10 one's own advancement. It is also an important check of our
11 association's character." Close quote.

12 Do you remember that?

13 A. I don't remember that but that sounds like Hank Duffy
14 to me.

15 Q. Flying in line 2, page 249.

16 A. Sure.

17 Q. You agree with that sentiment?

18 A. Sure.

19 Q. All right. And in fact, Jerry Mugerditchian, who we
20 talked about, that time he was the MEC chairman of Midway
21 Airlines?

22 A. That's right.

23 Q. Ahe attempted to get midway to hire 400 of the Eastern
24 strikers with full seniority?

25 A. Yes.

1 Q. But they got hired with reduced seniority. Do you
2 recall that happening?

3 A. I remember quite a few carriers including northwest,
4 about five or six carriers hired Eastern pilots.

5 Q. And do you recall that a fair number of them were hired
6 with full or at least partial seniority?

7 A. I don't remember. My recollection is everyone was new
8 hire. I don't remember anyone being integrated. If that is
9 incorrect, you can show me. My recollection is everyone was
10 a new hire.

11 Q. All right. Now, let's look at the TWA acquisition, as
12 we talked earlier today, the year 2001 prior to 9/14, was a
13 pretty good period of time for the airline industry.

14 A. Yes.

15 Q. People needed air -- airlines needed experienced pilots?

16 A. Yes.

17 Q. All right. When Eastern went under there wasn't a whole
18 lot of hiring going on. That is one of the reasons why Frank
19 Lorenzo thought he would get scabs in to fly his planes for
20 him, right?

21 MR. KATZ: I am going to object. There is no basis
22 for this witness to know what is what was going on in
23 Lorenzo's mind.

24 THE COURT: Yes.

25 Q. I will rephrase it. As part of the four senior

1 executives, were you one of the four senior executives at
2 that time?

3 A. Where?

4 Q. At Eastern strike?

5 A. I was at Northwest Airlines, I was not a national
6 officer. I was master chairman of Northwest to Minneapolis
7 and I wasn't elected until October and didn't take office
8 until 91.

9 Q. All right. So I erred as far as where you lay there
10 time wise. I apologize.

11 Isn't it a fact that there was another item of
12 Leverage, you could have used in the first part, the first
13 two thirds of 2001 on behalf of the TWA pilots. Couldn't you
14 have gone to the CEO of American Airlines, Carty, and tell
15 him if you don't put pressure on your union to treat these
16 TWA pilots fairly, then we are going to go to our ALPA
17 carriers who need experienced pilots, and ask them to hire
18 the staple people on, with seniority. Wasn't that a credible
19 threat?

20 A. No one asked me at TWA to hire their, jobs for our
21 pilots. Nobody ever approached me with that proposal.

22 Q. I am not asking you if they approached you. You are the
23 president of the union, right? You are the president of the
24 union. You are the person who you said that you went in and
25 you made some calls to people to reduce the stapling from

1 full. I am asking, did you ever suggest to anyone saying,
2 look, we can apply more pressure here. They need the pilots
3 to fly the planes. If we can get the pilots jobs somewhere
4 else with seniority under the fragmentation policy we can
5 put a lot of pressure on American Airlines.

6 MR. KATZ: I am going to object, your Honor. I
7 think this proposition is first of all incoherent.

8 THE COURT: I am going to sustain the objection to
9 that question.

10 MR. JACOBSON: To the question or the chain of
11 questions?

12 THE COURT: Just the one that has been objected to.

13 MR. JACOBSON: All right, thank you.

14 Q. Did you ever consider ways of putting pressure on
15 American Airlines so that they would put pressure on APA?

16 THE COURT: Did you ever consider trying to get the
17 TWA pilots job for them?

18 MR. JACOBSON: Different question now, your Honor.
19 The question now is whether he ever considered trying to
20 apply pressure --

21 THE COURT: The answer to my first question was no,
22 right? You never tried to get the TWA pilots employed at
23 other airlines.

24 A. I was unaware that they wanted to work at any other
25 airlines.

1 THE COURT: Now, the next question.

2 Q. The question is did you ever consider how you might
3 apply pressure to American Airlines so that they would put
4 pressure on their union to treat your union members better?

5 A. I think that was the best efforts agreement that
6 resulted in the TWA LLC. That best efforts is what we got
7 from American, which they agreed to use best efforts.

8 Q. Right. You understand best efforts in their mind meant
9 they hire a facilitator, a mediator with no power to cause
10 anyone to make a decision and that was the extent of their
11 responsibility?

12 A. You can interpret best efforts. There was a grievance
13 over best efforts.

14 Q. That, the grievance, that is the position American took,
15 right?

16 A. I don't know what their position was.

17 Q. It is in evidence so the jury will know.

18 Now, I mentioned a moment ago the phrase scab.
19 Right? That is a phrase that is used in union work
20 sometimes.

21 A. Yes.

22 Q. And a scab is someone, for example, who crosses a picket
23 line or violates a strike to go to work for an employer who
24 is the subject of a job action?

25 A. That's correct.

1 Q. ALPA remembers who the scabs are in their various job
2 actions, correct?

3 A. Yes.

4 Q. In fact, you keep lists of who the scabs are, to the
5 best you know, from every strike going back to 1931, Century
6 Airlines?

7 A. We do not keep a list.

8 Q. You do not keep a list?

9 A. We do not keep a list.

10 Q. You do not keep a list and provide them to your pilots
11 so they know who are scabs and who are not?

12 THE COURT: Who is naughty and who is nice?

13 MR. JACOBSON: Yes, your Honor.

14 THE WITNESS: Your Honor, you should know that that
15 has been determined to be illegal. We do not do that.

16 THE COURT: I would have thought so.

17 THE WITNESS: We do not, ALPA does not.

18 THE COURT: Your answer to the question is you
19 don't keep such lists.

20 THE WITNESS: That's right.

21 THE COURT: All right.

22 Q. Let me give you something that is not marked as an
23 exhibit because it won't be offered as an exhibit but perhaps
24 you will find it useful.

25 MR. KATZ: Your Honor, I object to any examination

1 of the witness with this document. This is really far afield
2 from the facts of this case. It is a decision, 1999, from
3 the Eleventh Circuit, relating to one of the aspects of the
4 Eastern Airlines strike apparently.

5 THE COURT: Yes. I am not going to let you
6 question him on a legal opinion.

7 MR. JACOBSON: There is a factual portion in it I
8 would like to direct your attention to see if it refreshes
9 his recollection about a scab list.

10 THE COURT: Go ahead. You are just going to point
11 to him and ask if it refreshes recollection. What page?

12 Q. Page 1190, sir. Left-hand column. Bottom paragraph.
13 Continues on to the right-hand column.

14 A. Beginning where?

15 Q. Page 1190?

16 THE COURT: During, the word during.

17 Q. During the sympathy strike.

18 MR. KATZ: Your Honor, I really object to this.

19 THE COURT: You asked if it refreshed his
20 recollection.

21 MR. KATZ: He already testified he wasn't involved
22 in any of the national activities of the union. It is way
23 off the of the issues in the case. It is a total
24 distraction.

25 THE COURT: Does it refresh your recollection.

1 THE WITNESS: No, your Honor, it does not.

2 THE COURT: Okay. Go on to the next subject. You
3 can't use this document for any purpose. All right.

4 MR. JACOBSON: Maybe I can use this document. Mark
5 this as plaintiff's exhibit 449.

6 THE COURT: 44 what?

7 MR. JACOBSON: 449, your Honor.

8 MR. KATZ: I object to any cross examination of the
9 witness with regard to this document. This is totally beyond
10 the scope of the direct examination. All this business about
11 scabs has nothing to do with this case. No one has accused
12 American pilots or TWA pilots of being scabs.

13 THE COURT: They didn't have a strike so we never
14 had the issue of anybody crossing a picket line.

15 MR. JACOBSON: This goes to the question of jumpseat
16 privilege. This witness testified on direct examination that
17 it is improper to exclude, under ALPA policy, it is, as a
18 means of punishing, coercing or retaliating against other
19 pilots or groups or individuals. It is not supported by
20 ALPA. This is heading toward that.

21 MR. KATZ: I object. The jumpseat policy is in
22 evidence. If he wants to ask Captain Woerth about jumpseat
23 policy, that is one thing. This whole scab issue is a total
24 red herring.

25 THE COURT: I see nothing that would permit

1 questioning on this document.

2 MR. JACOBSON: Look at the very bottom of the page,
3 your Honor, at the name of the document.

4 THE COURT: Yeah?

5 MR. JACOBSON: I think I ask him whether he is
6 familiar with this document and some other questions on that
7 line.

8 THE COURT: Let me see where you are going. What
9 is your next question.

10 Q. All right. Mr. Woerth, is it not a fact that as a
11 matter of unwritten policy, the Air Line Pilots Association
12 encourages or directs its members to exclude from their
13 jumpseats pilots who are characterized as scabs?

14 A. Are you saying is that ALPA's policy?

15 Q. I said is that ALPA's policy or practice?

16 A. No, it is not.

17 Q. It is not at all?

18 A. No.

19 MR. JACOBSON: That is his testimony.

20 THE COURT: In our case there is no strike. There
21 is no issue, the issue of the jumpseats wasn't to keep out
22 scabs. It was to keep out everybody. It was to keep --

23 MR. JACOBSON: No.

24 THE COURT: It was to keep the 11,000 American
25 pilots from riding in the jumpseats.

1 MR. KATZ: American pilots weren't scabs. They
2 were working.

3 THE COURT: They were working. They weren't scabs.

4 MR. JACOBSON: The policy is denial of jumpseat
5 privileges as a means of punishing, coercing, retaliating
6 against other pilots, groups or individuals is not supported
7 by ALPA. His contention was I didn't offer a jumpseat.

8 THE COURT: Don't want to coerce the American
9 pilots because of this policy. I am asking him whether they
10 were punishing pilots through groups or individuals,
11 notwithstanding the language because of strike breakers or
12 other scabs.

13 THE COURT: He answered that question.

14 MR. KATZ: He answered that question.

15 THE COURT: He said no.

16 MR. JACOBSON: I understand. I am ending that
17 question.

18 THE COURT: All right.

19 MR. JACOBSON: I have no further questions for this
20 witness, your Honor.

21 THE COURT: All right. This will be in the area
22 now of redirect.

23 MR. KATZ: Yes, you your Honor, I have a few
24 questions on redirect.

25

1 REDIRECT EXAMINATION.

2 BY MR. KATZ:

3 Q. Mr. Woerth, if you can remember back to yesterday
4 afternoon when the cross examination began, there were some
5 questions regarding the talk you gave at the Allied Pilots
6 Association board of directors on October 27, 2000. Do you
7 recall that questioning, sir?

8 A. Yes, I do.

9 Q. Would you refresh the jury's recollection as to where,
10 what point in time that was with regard to the announcement
11 of Americans proposed acquisition of the assets of TWA?

12 A. I think, October, 2000, right after our board of
13 directors unity resolution, and the TWA announcement of a
14 willing to acquire, I mean, American will to go acquire TWA
15 assets didn't occur until the following January, 2001, so
16 this is 90 days, approximately, somewhere around three months
17 prior to that.

18 Q. Thank you, Mr. Woerth. And there was in connection with
19 the cross examination some discussion of a services agreement
20 that was entered into between ALPA and the Allied Pilots
21 Association. Do you recall that?

22 A. Yes, I do.

23 Q. And there was in fact an exhibit that was put into
24 evidence that was the services agreement itself?

25 A. I remember that.

1 Q. And do you remember when the services under that
2 agreement were performed?

3 A. In a very short period of time frame after the signature
4 of both John Darrah and myself. I don't remember the exact
5 dates.

6 Q. I would like to show you for identification the,
7 something to confirm the exact date, it is exhibit P-271 for
8 identification. Let me give you a copy, of that document.

9 Mr. Woerth, does this appear to be an invoice dated
10 January 5, 2001, from the Air Line Pilots Association for
11 services performed under the ALPA APA service contract.

12 A. Yes, it does.

13 MR. KATZ: Your Honor, I ask that this be received
14 in evidence.

15 MR. JACOBSON: No objection.

16 THE COURT: Okay. P-271 in evidence.

17 MR. KATZ: Thank you, your Honor.

18 Q. Does this refresh your recollection as to the exact
19 period of time when the services were performed under this
20 contract?

21 A. Well, we sent a billing January 5, so it must have been
22 mostly in December, I would estimate.

23 Q. Would you say the services had been completed by January
24 5 when the invoice was sent?

25 A. Yes.

1 Q. Then the second page of the document shows that the
2 Allied Pilots Association paid \$5,000 that was, it was
3 invoice D?

4 A. Yes, it does.

5 Q. And the actual services agreement is plaintiff's exhibit
6 1 15 which is in evidence. P 115. It has been received.
7 P-271 has been received?

8 THE COURT: Which one?

9 MR. KATZ: P-271 is received.

10 THE COURT: That is in evidence without objection.

11 Q. Let's go to P 115 which is also in evidence. And
12 pointing to the part under paragraph 1, where it says ALPA
13 will provide to APA the following in services. What were the
14 services that were to be performed under this contract with
15 APA?

16 A. Can you blow that up a little more for me?

17 Q. What was being done here?

18 A. Whatever is on that sheet is what we asked them to do.

19 Q. APA asked ALPA to do some analytical and clerical work
20 to create, collect did it take, and analyze a membership
21 contract survey. Could you describe for the jury what a
22 membership contract survey is?

23 A. A survey, if we are really trying to ascertain the
24 priorities of what the membership finds most important. Do
25 they find increased pay more important, maybe improved health

1 benefits more important, are there work rules they want to
2 change are more important. More days off, it is kind of a
3 ranking of all the, how the membership feels about all the
4 various issues in front of them and it was a way to gauge how
5 to prepare for contract negotiations to emphasize the
6 priorities of the membership.

7 So it is a fairly boilerplate thing. We do it all
8 the time. It is very simple for us to do. It is software.
9 We pretty much use what we have off the shelf, that is what
10 we use.

11 We do the same thing for all our airlines. We
12 survey our members before any contract negotiations begin.

13 Q. What department within the Air Line Pilots Association
14 handles these surveys?

15 A. I believe it is Economic, Financial Analysis. Something
16 likd that

17 Q. Sometimes referred to as EF and A?

18 A. That's correct.

19 Q. Do they do those surveys for other airlines?

20 A. We do them for other airlines. Everyone in ALPA we have
21 routinely provided these services for other independent
22 unions. We actually did a lot of work for a foreign
23 airlines. Many foreign airlines even created an independent
24 pilots services corporation so we could do services for other
25 airlines, including a foreign airlines. We had a big staff,

1 and we had a lot of requests so we did services for other
2 airlines on a fee, on a per fee basis. It was fairly
3 routine.

4 Q. And so you had contracts with other pilots unions,
5 independent unions, and foreign pilot unions to do this kind
6 of work?

7 A. That's correct.

8 Q. And beyond the membership survey, are you aware of any
9 work that was covered by this contract?

10 A. I believe the only work was specified by this agreement.

11 Q. All right. And they were, the work was done prior to
12 the announcement of the TWA asset acquisition?

13 A. I believe all the work was concluded in December, is my
14 recollection.

15 Q. Thank you, Mr. Woerth.

16 Mr. Woerth, yesterday afternoon you were cross
17 examined about comments that were made at this AMA board
18 meeting in October, 2000, regarding the 45 million dollars
19 contempt fine that had been assessed against the Allied
20 Pilots Association. Do you remember that discussion?

21 A. Yes, I do.

22 Q. Do you know when American Airlines and the Allied Pilots
23 Association resolved that issue?

24 A. I believe it was in April and maybe finally blessed by
25 the Judge in May, Judge Kendeall from Texas, that is my

1 understanding.

2 Q. Of what year, sir?

3 A. Of 2001.

4 Q. And do you have any notion as to how it was resolved?

5 A. There was a negotiation between American management and
6 the Allied Pilots Association. And they worked out that they
7 would basically spread this 45 million dollars over 20 years,
8 they wouldn't have to pay it back except, an installment
9 plan, a 20-year period.

10 THE COURT: With no interest.

11 A. I don't, I am unaware, I don't have that knowledge, your
12 Honor. I do know it is 20 years. That is all I know.

13 Q. How would you characterize the level of interest of the
14 American pilots in rejoining ALPA in the fall of 2000, the
15 year 2000?

16 A. Fall of 2000? I think in the fall of 2000, I think I
17 have already testified, I thought about five percent maybe.
18 I knew there was some interest, a few very, very interested
19 people but I didn't have a sense there was much -- those who
20 had interest were very intense, but I am afraid there weren't
21 very many of them.

22 Q. And when the acquisition of TWA's assets was announced
23 by American Airlines, did that level of interest go up or
24 down or stay about the same?

25 A. Basically, I think it went down. I don't think anybody

1 was interested in ALPA as long as the seniority integration
2 was a work in progress.

3 Q. And was that in in part because of the ALPA merger
4 Colorado policy?

5 A. Well, of course the joint ALPA you would get in
6 arbitration, which was their goal, to prevent an arbitration.

7 Q. There was some questioning there morning about Ron
8 Rindfleisch. Can you describe what his duties were at ALPA?

9 A. Ron was in, I believe worked for Seth Rosen. I would
10 describe him as a mid management type person. He wasn't a
11 director, he wasn't an assistant director. He performed
12 various functions for us, kind of a utility man, under my
13 administration, he did a lot of different things for us but
14 he didn't have management responsibility. He was not a
15 responsibility.

16 Q. Did he have the ability to set policy for ALPA?

17 A. Of course not.

18 Q. Did he have any budget authority for ALPA?

19 A. No, he did not.

20 Q. Do you know whether he supervised any other ALPA
21 employees?

22 A. I don't believe any employees reported to him.

23 Q. Would you consider him a high-ranking executive?

24 A. No, I would not.

25 Q. You received a letter from Mr. Wilder, seniority lawyer

1 for the TWA pilots on March 26, you testified about that
2 today and yesterday?

3 A. Yes.

4 Q. And at one point you said that it was made moot, I
5 believe, your phrase, in your testimony. Would you explain
6 what you meant by that?

7 A. I would have to refresh myself what Mr. Wilder was
8 asking.

9 Q. All right. Make we we can put that up on the screen.

10 A. I believe events over ran and I think we got an
11 agreement with American Airlines is I think what happened.

12 Q. That is what I was asking about. On April 2 the MEC
13 adopted a resolution that had something to do with the same
14 issues, didn't I?

15 A. That's correct.

16 Q. And at that point the MEC did not request that you
17 pursue the litigation.

18 MR. JACOBSON: Objection, your Honor, leading.

19 THE COURT: Sustained.

20 Q. What if anything did you hear from the MEC after the
21 March 26 letter?

22 A. I heard nothing on the subject at all.

23 Q. They didn't complain about the absence of any
24 litigation?

25 A. There was no communication on the subject whatsoever.

1 Q. On cross examination Mr. Jacobson asked you about some
2 items where you had testified earlier on direct that the ALPA
3 executive council approved the retention of certain advisors
4 like Mr. Baehler. Do you recall that testimony?

5 A. Yes, I do.

6 Q. And he was inquiring specifically, did the money come
7 for that purpose from the MCF, the major contingency fund, or
8 the OCF, the operating contingency fund, or the normal
9 budget.

10 THE COURT: What would be the MEC's own money.

11 MR. KATZ: That is what I wanted to ask about.

12 THE COURT: What is your question, what is your
13 non-leading question.

14 Q. How does the money work at ALPA in terms of the
15 treatment of money coming in? You are familiar with that,
16 aren't you, Mr. Woerth?

17 A. Yes.

18 Q. Would you describe that process, please?

19 MR. JACOBSON: I object, your Honor. This is a
20 question that calls for a narrative. How do I even know what
21 is going to happen here?

22 Q. With regard to the retention of an outside consultant
23 like Mr. Baehler --

24 THE COURT: Before you, let me -- every MEC gets a
25 budget from the collective pot of dues that are collected.

1 Right?

2 THE WITNESS: Yes, your Honor.

3 THE COURT: Then you have your contingency fund.

4 THE WITNESS: Yes, your Honor.

5 THE COURT: Presumably you keep some money to pay
6 your own expenses for those 500 employees.

7 THE WITNESS: That's correct, your Honor. I think
8 I can answer the question in 30 seconds.

9 THE COURT: What do you perceive the question to
10 be?

11 THE WITNESS: I perceive the question he is trying
12 to ask, how is the budget, what is the formula or the
13 rationale besides the budget.

14 THE COURT: Why is that relevant to this case?

15 MR. KATZ: We are talking about whether it was the
16 MEC's own money under ALPA's financial processes.

17 THE COURT: Well, the MEC is, am I correct, Mr.
18 Woerth, is given an amount of money which they then control,
19 what is taken from the overall dues of the organization.

20 THE WITNESS: Yes, your Honor. It is a formula.
21 It is not political. People don't make political judgments.
22 It is a formula that we have all agreed upon and they got
23 what the formula produced.

24 THE COURT: And the expenses that we talked about
25 were paid out of that money?

1 THE WITNESS: That's correct.

2 Q. Now, what I am getting to, Mr. Woerth, are there
3 limitations when you are talking about outside consultants
4 like Mr. Baehler, that affect any MEC's ability to access its
5 budgeted funds to spend in that fashion?

6 A. The requirement for any outside consultant is to get
7 permission, and the point is we are trying to control
8 expenses.

9 They have, you have your own in-house counsel and
10 we hope our own resources are good enough, so to help control
11 the cost of MECs and not just hire everybody's uncle and
12 cousin, there is some control of outside consultants. If
13 they feel they are needed, they are approved but they are
14 charged, accounted for --

15 THE COURT: They pay for it out of their own
16 budget.

17 A. Yes. They need permission to hire an outside
18 consultant.

19 THE COURT: I think he has testified to this
20 before. Go ahead.

21 Q. Mr. Woerth, do you know whether on April 10, 2001, when
22 TWA and its assets became TWA LLC, a subsidiary of American
23 Airlines, whether Mr. Compton and some of the other TWA
24 executives were asked by American Airlines to leave or stay
25 on or something else?

1 MR. JACOBSON: I object to the form of this
2 question, your Honor. I think it calls for hearsay and there
3 is no foundation.

4 THE COURT: No.

5 A. I honestly don't know the answer to that question.

6 MR. KATZ: Hang on, there is an objection.

7 THE COURT: He answered the question, he doesn't
8 know. But there is no doubt when TWA LLC started American
9 was running the show.

10 THE WITNESS: Oh, yes.

11 THE COURT: Surely they kept a lot of employees.
12 Of course, most of them.

13 A. Think normally make sure the operation runs.

14 THE COURT: They kept the pilots, they kept the
15 ground crews, they kept the gate staff. They kept all those
16 people.

17 Q. Do you know whether Bill Compton stayed on as an
18 executive for a while?

19 A. He stayed on. I am not sure in what capacity. I know
20 he was compensated. I don't know what his authority was
21 after that.

22 THE COURT: Do you know whether he was compensated
23 by TWA, Inc. Or TWA LLC, do you really know that?

24 A. I don't know that.

25 THE COURT: He doesn't know that.

1 Q. Exhibit D 88.

2 THE COURT: I want to take the last break now.

3 MR. KATZ: I just have one more question.

4 THE COURT: All right. Then ask it. Then you can
5 resume.

6 Q. D 88 is the minutes from this meeting, October 20 to 22,
7 that Mr. Jacobson asked you about on cross examination. And
8 with regard to the furlough protection issue, he asked you on
9 cross wouldn't it require the agreement of American Airlines
10 to give any extent of furlough protection to the TWA pilots.

11 And my question to you is do you know whether there
12 were any representatives of American Airlines who were
13 participating in the discussions at the Mayflower Hotel
14 October 20 to 23, 2001?

15 A. It was my understanding that the vice president of human
16 resources or labor relations, Jeff Brundage, was very engaged
17 in these discussions and he was having authority to make
18 proposals and what was possible. I think they were dealing
19 directly with Jeff Brundage and American management is my
20 understanding.

21 Q. Could we go to page 9, the top of the page?

22 THE COURT: Is this in evidence?

23 MR. KATZ: Yes, sir.

24 Q. Would you blow up the top paragraph, 1504?

25 THE COURT: What number is this?

1 MR. KATZ: D 88.

2 Q. Discussion with Jeff Brundage, vice president employee
3 relations. American Airlines.

4 MR. JACOBSON: Via phone.

5 MR. KATZ: Sorry?

6 MR. JACOBSON: Never mind.

7 Q. Does this reconfirm your recollection --

8 THE COURT: That is not redirect. That is picking
9 and choosing something you think is in evidence and repeating
10 it.

11 MR. KATZ: We have nothing further at this time.

12 THE COURT: By the way, we are going to take a
13 break for 15 or 20 minutes now. DO not discuss the case
14 among yourselves. Keep an open mind until you have heard all
15 the evidence.

16 All rise.

17 (The jury leaves the courtroom.)

18 THE COURT: Be seated. Mr. Katz.

19 MR. KATZ: Yes, your Honor.

20 THE COURT: You know the sound of a door opening,
21 you know the sound when you hear it?

22 MR. KATZ: I hear it.

23 THE COURT: Well, you tried to get this witness to
24 basically say that prior to April 10, or April 3rd, 2002,
25 there really was only a very small group of people at

1 American who were interested -- pilots, who were interested
2 in merging, because of the ALPA merger policy, or integration
3 policy. There really was only a small number of pilots who
4 were interested.

5 Do you realize that that may open the door to the
6 very thing you are trying to keep out post April 3rd things,
7 because that -- if two major hubs vote merger issues just
8 days after, that puts to lie somewhat, or calls into question
9 testimony, well, there was a little interest but there really
10 wasn't very much.

11 MR. KATZ: My question, your Honor, my question was
12 prior to January 9, 2001 --

13 THE COURT: Yeah, but the inference, there is no
14 inference that changed. Certainly it didn't increase after
15 the announcement when the --

16 MR. PRESS: The testimony was contrary..

17 THE COURT: What?

18 MR. PRESS: Before the TWA transaction it was less
19 than five percent and it gotten less after that.

20 THE COURT: The fact before January, even less. So
21 I mean the thrust of that testimony is yeah, there were a
22 couple of zealots that were interested, but nobody else was,
23 and the merger policy was, ALPA's merger policy, integration
24 policy, was no problem.

25 I am going to deal with that when you I get your

1 objection to strike, and, but that testimony bothered me. It
2 bothered me because it is inconsistent with, you know, two
3 days later, suddenly to have two major hubs, one in Miami and
4 one in Fort Worth, Dallas, Fort Worth. Suddenly passing
5 refuse suddenly passing a resolution to merge.

6 Anyway. I will see you all at 10 after one.

7 (Recess).

8 DUANE WOERTH, resumes.

9 THE COURT: Mr. Jacobson.

10 MR. JACOBSON: I would like to walk through that
11 door now with exhibit P 148, five W's, which are the two
12 resolutions, Miami and Dallas Fort Worth that were received,
13 by this witness the day after exclusive --

14 THE COURT: These are things that were passed like
15 on the 3rd or the 4th or the tenth.

16 MR. JACOBSON: Yes.

17 THE COURT: I know you had one of the documents
18 relating to October. That is a different kettle of fish.

19 MR. JACOBSON: Yes, that was the actual
20 presentation.

21 THE COURT: I think that is different.

22 MR. JACOBSON: I am just looking for the actual
23 resolutions at this point.

24 THE COURT: These are the resolutions passed in
25 Dallas Fort Worth.

1 MR. JACOBSON: And Miami.

2 THE COURT: What are the dates they were passed.

3 MR. JACOBSON: April 3rd 2002.

4 THE COURT: Both of them?

5 MR. JACOBSON: It appears to be. They were
6 forwarded by a --

7 THE COURT: Mr. Jacobson, leave argument for
8 argument.

9 MR. JACOBSON: I shall. I will ask these if these
10 are what they were.

11 THE COURT: They are already in evidence at this
12 point.

13 THE COURT: If it is April 3rd I will allow it.

14 MR. JACOBSON: Yes.

15 THE COURT: I am not going to allow it for October.
16 October is --

17 MR. JACOBSON: I understood your ruling, your Honor.

18 MR. FRAM: Your Honor, we are we clear, if counsel
19 is permitted to do this, that Captain Woerth will not have to
20 return?

21 THE COURT: Say again?

22 MR. FRAM: The question of him returning --

23 I think this reduces significantly the chance. I
24 don't know what you are going to do. You have a big, thick,
25 exhibit. 148. Www www, so, if I multiply 26 times six there

1 is more than 100 emails. I don't know what you will object
2 to.

3 MR. FRAM: Everything after April 3. They are
4 organized chronologically.

5 THE COURT: At this point, I don't want to make an
6 absolute commitment. Look, I don't want him, he is doing
7 important work for our government at the moment and I don't
8 want to interfere with his doing his important work, but in
9 fairness to everybody involved, I have to leave it open the
10 chance that there may be some further examination. But this
11 will reduce it.

12 Because this point, these resolutions go right to
13 the heart of the matter, and again, it is not that it is
14 exaggerated, it shows, to try to minimize the interest of the
15 ALPSA and APA pilots in doing it, in doing the merger, and I
16 think that resolutions passed on the same day they became a
17 single carrier could be used to at least challenge that
18 assumption.

19 MR. JACOBSON: Your Honor, one further question.
20 Does your ruling permit me to ask him the question, did you
21 then attend any meetings at any of these domiciles. In
22 regard to these motions. Am I allowed to ask that or not,
23 your Honor?

24 THE COURT: Well, can you ask him did he follow-up
25 on these resolutions. I will let you ask that question.

1 That is it.

2 MR. KATZ: The first meeting was in October, your
3 Honor.

4 MR. PRESS: No, it was in August.

5 MR. KATZ: The first meeting he attended --.

6 MR. FRAM: Your Honor.

7 THE COURT: I am going to ask that he follow-up.

8 MR. JACOBSON: I object.

9 MR. FRAM: That is limited to a yes or no.

10 THE COURT: Not a date, just a yes or no answer.

11 MR. JACOBSON: I understand, your Honor.

12 MR. FRAM: Thank you.

13 THE COURT: Okay. Can she bring the jury in?

14 MR. JACOBSON: Yes, your Honor.

15 THE COURT: Okay.

16 (Jury enters the courtroom.)

17 DUANE WOERTH, resumes.

18 RECROSS examination

19 MR. JACOBSON: Mr. Jacobson, I recognize you to
20 continue your brief cross.

21 MR. JACOBSON: Thank you, your Honor.

22 Q. Mr. Woerth, on redirect examination, you were shown an
23 invoice and check marked as exhibit P-271, that was for
24 services provided to APA by ALPA. Do you recall that, sir?

25 A. Yes.

1 Q. And you testified that this was the full extent of the
2 work and the full payment. Is that what you testified, sir?

3 A. That agreement, that was my understanding.

4 Q. If we could look at P 115.

5 THE COURT: This is in evidence.

6 MR. JACOBSON: That is in evidence, your Honor.

7 Q. You were shown just the paragraph numbered 2. Highlight
8 the one, down to three.

9 You were just shown the one that is number two here
10 in the middle which is regarding survey information. Do you
11 see that?

12 A. Yes.

13 Q. All right. You see that there is the next paragraph
14 which talks about hourly charges for additional work.

15 A. Yes.

16 Q. So this invoice and the work that was completed as of
17 January 5, 2001, that just related to the Paragraph 2 work,
18 correct, the initial survey?

19 A. Apparently.

20 Q. And not the analytical and clerical work preference
21 referenced in paragraph 3 which is additional?

22 A. I am not sure there was additional work done. I don't
23 know if it was.

24 Q. You don't know one way or the other?

25 A. No.

1 Q. You also said you provide these kind of services to a
2 large number of airlines, other airlines that, unions from
3 airlines that are unaffiliated with ALPA, correct?

4 A. Yes.

5 Q. And you mentioned in addition foreign airlines?

6 A. Yes.

7 Q. You testified at one point in your testimony yesterday,
8 I believe, it may have been today, that you went to that
9 meeting in October of 2000 with APA because you were kind of
10 mad that you were providing services for APA and yet they
11 weren't making any movement towards rejoining ALPA. Do you
12 recall that?

13 A. Yes.

14 Q. Did you also go to meetings in a state of anger with
15 these various foreign carriers and the other independent
16 unions for whom you were doing services?

17 A. No. For a very different reason.

18 Q. My question was did you also go see them and say hey, we
19 are providing you services, why aren't you joining up?

20 A. To the foreign airlines?

21 Q. Yes.

22 A. No.

23 Q. You got Canadian Airlines on board?

24 A. We organized Canadian Airlines.

25 Q. You have affiliations with British Airlines.

1 A. We an affiliation with --

2 Q. The Constitution, references at the top an affiliation
3 you set up with the British Airline pilots, do you recall
4 that?

5 A. You are educating the president about an affiliation I
6 am unaware of.

7 Q. All right. My question is the other independent
8 airlines in the United States for whom you are performing
9 these services, you didn't go to any of those and say wait a
10 second, we are doing services for you, you need to come on
11 board?

12 A. We weren't ever going to attempt to organize people
13 outside of our country and Europe, we got Canada, we weren't
14 attempting to go organize them.

15 Q. I am focusing, you said other independent airlines in
16 the U.S. you provide services. You didn't go to those people
17 and say hey, we are providing you with services, we are tired
18 of doing that, you need to come on board?

19 A. We didn't have a relationship, ongoing failed
20 relationship with anyone other than APA that was frustrating
21 me to that degree.

22 Q. Now, you also said that as of the time of that meeting
23 in October you thought that the interest level among the
24 American pilots in joining ALPA was something like five
25 percent, roughly. Do you recall that?

1 A. Yes.

2 Q. And you said that after the TWA acquisition was
3 announced that that interest level went down from there?

4 A. Yes.

5 Q. I would like to show you a document that has been
6 marked, actually it is in evidence already as part of P-148,
7 1 of those big binders over there. This particular set of
8 pages are marked as P-148 followed by five W's.

9 MR. KATZ: Your Honor, for the record, ALPA would
10 like to reserve its objection to examination based upon this
11 line of questioning?

12 THE COURT: Okay.

13 Q. All right.

14 (Pause)

15 Q. Have you had ha chance to review that?

16 A. Yeah.

17 Q. The first page is an email that was forwarded to you
18 from Ron Rindfleisch, correct?

19 A. That is what it says, yeah.

20 Q. It is dated April 4?

21 A. Yes.

22 Q. And it has to you and also that long list of people I
23 mentioned earlier in connection with exhibit P 31 which you
24 saw earlier, right?

25 A. Yes.

1 Q. And it is the subject is ALPA merger resolution under
2 consideration in DFW. Subject line?

3 A. That is what it says.

4 Q. Now, the date of this is April, the email to you is
5 April 4, 2002, correct?

6 A. Yes.

7 Q. It is forwarding an original email below that, doesn't
8 it, sir?

9 A. That is what appears to be, yes.

10 Q. And that email was from Mark Hunnibell to Ron
11 Rindfleisch, correct?

12 A. Yes.

13 Q. And with a copy to John Clark?

14 A. Yes.

15 Q. And you knew Rindfleisch and Hunnibell were the people
16 doing the card, authorization card over at American?

17 A. Rindfleisch was not doing the card.

18 Q. Not Rindfleisch, Clark and Hunnibell?

19 A. That was my understanding, yes.

20 Q. All right. And the email from Mark Hunnibell is
21 forwarding you a resolution as introduced at the DFW
22 domicile?

23 A. That is what it purports to be, yes.

24 Q. You know that the Dallas Fort Worth, that is what DFW
25 stands for, sir?

1 A. Yes.

2 Q. That is the largest base for the American pilots?

3 A. Yes.

4 Q. If you turn to two pages in, you see a resolution or a
5 draft resolution, correct?

6 A. Yes.

7 Q. All right. And it is a resolution, proposed resolution,
8 for American Airlines to become part of ALPA, correct?

9 A. Yes.

10 Q. Let's turn if we could to the third page of this
11 resolution and there is, be it further resolved, a number of
12 bullet points.

13 A. Yes.

14 Q. All right. Could you highlight the first three bullet
15 points there, please?

16 A. Line 113.

17 Q. Yes. Could you tell the jury what the first three
18 provisos of this proposed resolution were?

19 MR. KATZ: Your Honor, I am going to object to the
20 detailed examination of the witness about it, an APA
21 resolution.

22 THE COURT: Let me, this resolution was to promote
23 the merger of ALPA and APA, correct? That was the intent of
24 this resolution.

25 A. Their resolution, it looked like that was what their

1 goal was of the people who offered it.

2 THE COURT: All right.

3 Q. And the dates that this was sent to Mr. Rindfleisch from
4 Mr. Hunnibell was April 3rd. Correct?

5 A. Yes.

6 Q. That is the same day that your union lost its
7 representational rights for the former TWA pilots, correct?

8 A. That's correct.

9 Q. And and one of the provisos that they have in their
10 resolution is that if they are merged that there will be no
11 attempts to alter the seniority integration agreements
12 relating to TWA, correct?

13 A. That is what they wanted.

14 Q. Then if you turn, one, 2, three pages later you will see
15 a resolution from the Miami. MIA, Miami.

16 A. Yes.

17 Q. Would you agree that that is essentially the same
18 resolution as they did in Dallas, Fort Worth?

19 A. I haven't done a forensic analysis but it looks pretty
20 much the same to me.

21 Q. If you turn to the second page of that they have the
22 same series or similar series of provisos about what they
23 want, if there is a reunification between the two unions?

24 A. Yes.

25 Q. That would include no attempts to alter seniority

1 integration relative to TWA?

2 A. Yes.

3 Q. And I would like you to look for a minute on the screen
4 at plaintiffs P 31 which was previously in evidence. That
5 was the March 18, 2002 email, to all of you forwarding the,
6 supposedly an ALPA merger MIA dock, right?

7 A. That is what those words say.

8 Q. Looking at the second resolution attached to this
9 exhibit, P-148, WWWWW, does that appear to you to be the
10 Miami resolution referenced in the March 18, 2002 email?

11 A. How would I possibly know that.

12 THE COURT: How could he know?

13 Q. I asked if he knows?

14 THE COURT: You don't know that.

15 A. Of course I don't know that.

16 MR. JACOBSON: No further questions of this
17 witness, your Honor.

18 MR. KATZ: Nothing further, your Honor.

19 THE COURT: Okay. Thank you very much, Captain.
20 You may step down.

21 THE WITNESS: Thank you, your Honor.

22 (Witness excused.)

23 THE COURT: Mr. Katz, call your next witness.

24 MR. KATZ: Mr. Fram is going to call the next
25 witness, your Honor.

1 THE COURT: I am sorry?

2 MR. KATZ: Mr. Fram is going to call the next
3 witness.

4 MR. FRAM: Thank you, your Honor. I am going to
5 call Steven Rautenberg.

6 THE COURT: Say the last name.

7 MR. FRAM: Steven Rautenberg.

8 S T E V E N P A U L R A U T E N B E R G,
9 Sworn.

10 DIRECT EXAMINATION.

11 BY MR. FRAM:

12 MR. FRAM: If I may, your Honor.

13 THE COURT: Yes, you may.

14 MR. FRAM: I will stand by the podium.

15 THE COURT: However is comfortable for you.

16 MR. FRAM: Thank you.

17 Q. Mr. Rautenberg, can you tell us where you live, please?

18 A. I live in lake St. Louis, Missouri.

19 Q. How old are you?

20 A. 59.

21 Q. And what do you do today for a living?

22 A. I am an MD 80 captain for American Airlines.

23 Q. Get some background. Where do you grow up, please?

24 A. Most of it I grew up in Edmonds, Washington. My dad was
25 a Navy man. We moved around a lot, but I graduated from high

1 school in Edmonds.

2 Q. Are you a college grad?

3 A. I am.

4 Q. Where did you go and what degree did you receive,
5 please?

6 A. Excuse me. I went to the University of Washington. I
7 have a bachelor of science in electrical engineering, and I
8 attended California Lutheran College, where I received a MBA.

9 Q. What year did you get your undergrad degree, please?

10 A. 1973.

11 Q. How about your MBA?

12 A. I believe it was 1985.

13 Q. There was a little bit of a gap between those years.
14 Can you tell us what you were doing between when you
15 graduated college and when you got the MBA, please?

16 A. After college graduation I went to active duty in the
17 navy, served as a naval aviator and officer from 1973 to '79.
18 And in the spring of 1979 I was hired by TWA.

19 Q. Did you continue your military service after your
20 activity duty?

21 A. I continued in the Reserves from 1979 through 1993, I
22 retired from the Reserves in 1993.

23 Q. What were the highest ranks that you attained while on
24 active duty in the reserves?

25 A. On active duty, the highest rank I attained was

1 lieutenant, 03, and the REserves I retired as a commander,
2 05.

3 Q. When you began at TWA in 1979 what position did you
4 have?

5 A. My first position was 727 flight engineer.

6 Q. Okay. Did you work continuously for TWA from 1979 up
7 until early 2001?

8 A. No. I did not. I was furloughed in, I believe the
9 first of October of 1979. I was furloughed almost
10 immediately after being hired at TWA.

11 Q. For how long were you out on furlough at that point?

12 A. I was out on furlough approximately five and a half
13 years.

14 Q. What did do you during that timeframe?

15 A. I went to work for an aerospace firm by the name of
16 Teledyne Electronics. I served as a staff engineer and a
17 program manager.

18 Q. Nor how long did you do that?

19 A. The entirety of the furlough, five and a half years.

20 Q. So you were recalled to TWA in approximately when, 85?

21 A. I was recalled in April of 1985.

22 Q. Okay. Did you have other furloughs during the remainder
23 of your career with TWA?

24 A. No, I did not.

25 Q. And as of early 2001 what was your position with TWA?

1 A. I was a 767 captain.

2 Q. Okay. And I am not sure I asked you about of this, how
3 old are you today?

4 A. 59.

5 Q. About ten years ago you would have been 49?

6 A. Correct.

7 Q. Did you at some point become involved in the Air Line
8 Pilots Association, which we are referring to as ALPA?

9 A. That's correct.

10 Q. When did that start, please?

11 A. I started in, unofficial capacity more as a activist
12 probably in about 1993. I became interested in issues and
13 began contacting representatives and so on and so forth. I
14 didn't attain an official position in ALPA until about
15 September of 2000.

16 Q. What about 1993, or the events of 1993 led you to become
17 involved in an unofficial capacity?

18 A. Principally, I think it was the risk to my career caused
19 by TWA's financial struggles.

20 Q. Can you give us a little detail about what those
21 financial struggles were and how, why they raised the
22 concern?

23 A. The financial struggles I think began when Carl Icahn
24 bought in to TWA in the 1986 timeframe. But the company
25 entered bankruptcy, I believe the first time was in 1992, and

1 you know, it was the company's inability to escape from Icahn
2 to make a profit consistently to demonstrate that it was
3 going to be around for the long term.

4 Q. What type of work did you do unofficially beginning in
5 1993 to address that?

6 A. I wouldn't call it, I wouldn't call it work necessarily.
7 It was letter writing, talking to representatives, and so on.

8 Q. And I think you mentioned that in September of 2000 you
9 got more officially involved?

10 A. In September of 2000 I was elected the local council
11 captain representative and then subsequently the local
12 council chairman. That was Council 3 in St. Louis.

13 Q. About how many pilots were represented out of Council 3
14 at that point?

15 A. I am going to have to estimate about 1,400, I believe.

16 Q. And were those 1,400 divided between captains and first
17 officers?

18 A. Yes.

19 Q. Do you recall the proportion?

20 A. Approximately 50-50 but not quite. There was probably
21 more captains than there were first officers.

22 Q. And what proportion of the total number of TWA pilots in
23 late 2000 was that 1,400?

24 A. Well, in the beginning of 2001, the active seniority
25 list had I believe 2,30041 pilots on it so it was a little

1 bit more than 50 percent.

2 Q. And what led you to run for elected position at some
3 point before September, 2000?

4 A. I was unhappy with the direction the union was going.

5 Q. And can you give us a little detail about what you were
6 unhappy about?

7 A. I think so. There were individuals who were in a
8 position of authority, who were, I thought, exceeding the
9 bounds of what was appropriate. One in particular was, was
10 serving as one of the MEC officers as well as one of the
11 local council representatives, and I didn't believe that this
12 particular individual in both of those positions was serving
13 our interests.

14 Q. We will be talking a bit about TWA's bankruptcy and its
15 financial condition. Was there anything about TWA's
16 financial circumstances in late 2000 that led you to get more
17 active?

18 A. Well, my concern with TWA's financial concern was pretty
19 much active throughout that timeframe, from, you know, 1986
20 when Carl Icahn came on the scene until the ultimate
21 dissolution of the company, 2001.

22 Q. Okay. Do you recall when you first heard about the
23 third bankruptcy filing, the one in January of 2001, and the
24 proposed deal with American Airlines?

25 A. I do.

1 Q. Tell us how you heard about that?

2 A. I heard about it on the radio. As I was preparing to
3 get up and I think go to an MEC meeting if I am not mistaken.
4 Or to work. I don't recall.

5 Q. What was the reaction to news of the bankruptcy and the
6 proposed deal with American?

7 A. Astonishment. I was astonished. I was happy. I was
8 curious. I think all of those things.

9 Q. Was there a lot of emotions. Tell us why you were
10 astonished?

11 A. Well, my expectation at the time was that I would hear
12 on the radio that TWA had ceased to operate. And I think
13 astonishment was that it looked like there might be a
14 future.

15 Q. And how about the happiness?

16 A. Same, same thing.

17 Q. That there might be a future?

18 A. Right.

19 Q. And I think you mentioned you were curious as well?

20 A. Yes. Yes. I was curious as to what it all would bring.
21 Uncertain about the future, but yet happy about the prospect
22 that things would be turning up.

23 Q. Did there come a point after you heard about the
24 bankruptcy and the proposed deal on the radio that you got
25 more specific information about what was happening?

1 A. Yes. There was an MEC meeting within the next day or
2 so, and we got information there. We received a copy of the
3 asset purchase agreement that had been executed between TWA
4 and American.

5 Q. When you say we received, can you describe who you are
6 referring to, please?

7 A. By "we" I mean the members of the MEC. The MEC
8 officers, staff, members of the MEC received it.

9 Q. What I what I am going to do, if I might approach the
10 witness, I am going to give him a stack of documents that I
11 would like to work through, most of which are in evidence.
12 There are a handful that are not and I will hand those out.

13 Just to fix some of the specifics. I placed in
14 front of you, I think the document on top is D 242 in
15 evidence.

16 THE COURT: P?

17 MR. FRAM: D 242 in evidence. Which is the minutes
18 of the -- the MEC meeting on January 11, 2001.

19 A. Yes, I have that.

20 Q. Do you recognize that document?

21 A. Yes.

22 THE COURT: It is in evidence.

23 MR. FRAM: Yes, thank you, your Honor.

24 Q. Is that the meeting just referred to a couple moments
25 ago?

1 A. Yes, it is.

2 Q. You referred to a "we" and I asked you who was involved.
3 At the top of those minutes, the top of those minutes, does
4 that list the people or at least the elected local council
5 members and officers that were present at the meeting?

6 A. Yes, it does.

7 Q. I think you mentioned a minute ago that you received a
8 copy of the asset purchase agreement between American and TWA
9 at this meeting?

10 A. Yes. Early on we received a copy of the asset purchase
11 agreement. I don't recall the exact date but early on we
12 did.

13 Q. You think it would have been as of the date of this
14 meeting?

15 A. I believe so.

16 Q. Did you take the time to review the asset purchase
17 agreement?

18 A. I did.

19 Q. And did you notice any provisions that were of
20 particular interest to you?

21 A. Well, I immediately turned to what we already understood
22 to be the section detailing the employee provisions which my
23 recollection is was section 10, and I immediately read
24 through section 10, and on reading it, my happiness, elation,
25 about the announcement of the deal started to wane pretty

1 drastically. My heart sank.

2 Q. What did you see in that section of the agreement that
3 led your heart to start to sink?

4 A. Well, the document detailed the condition that the
5 employee groups would have to waive their scope provisions,
6 and other provisions of their existing contracts.

7 Q. Just so we are all on the same page, can you describe
8 what the scope provisions meant to you?

9 A. The scope provisions meant to me that we had available
10 to us the eventuality of an arbitrator taking a look at the
11 seniority integration that would ensue.

12 Q. And did you come to understand why American made the
13 waiver of scope a condition of the deal with TWA?

14 A. I am not sure at what point I became, you know,
15 completely familiar with that. But early on I did become
16 quite familiar with that. There was a, relative to the
17 pilots, there was a provision in the American pilots contract
18 that was going to be in conflict with the scope provisions in
19 our contract.

20 Q. And what understanding, if you recall, did you have of
21 the provision in the American pilots contract that would have
22 affected the TWA pilots?

23 A. I am sorry. I didn't hear the question.

24 Q. What understanding did you have of the contract
25 provision, the American pilots contract, that was of concern

1 to you?

2 A. Well, the American pilots contract, it appeared to
3 indicate that pilots who came to work at American would go in
4 order of the date they began line flying, and it really made
5 no exception for acquisition or mergers or otherwise. So
6 that is what it looked like to me, the American pilots
7 contract required.

8 Q. You just mentioned the term line flying. Can you
9 describe for the jury what that is?

10 A. When you are hired at an airline, you initially go
11 through a process of training, and not until you complete
12 that training, be it ground school or simulated training, and
13 actually reach the line, reach the cockpit, that is the point
14 at which the American pilots contract stipulated that pilots
15 would be added to the seniority list, in that order.

16 Q. So line flying is actually a day after the date of
17 official hire?

18 A. That's correct.

19 Q. Do you recall at this first meeting of the MEC after the
20 announcement on January 11 that some outside professional
21 were there to advise the members of the MEC?

22 A. I believe there were, yes.

23 Q. Sir, would you please turn to the second page of the
24 minutes. Do you see about 40 percent down, Judge Mabey,
25 LeBoeuf, Lamb, Green and MacRae?

1 A. Yes.

2 Q. Do you recall this fellow, he is listed there as a
3 Judge, do you recall he was a retired federal bankruptcy
4 judge?

5 A. Yes.

6 Q. Do you recall comments he made at the meeting about the
7 terms of the agreement and its implication?

8 A. Yes.

9 Q. Do you recall other professional, other outside advisors
10 being brought on board to help the TWA MEC?

11 A. Over the period of time there was a lot of outside
12 advisors and proves always who appeared before the MEC.

13 Q. Before we get into some of the detail, I would like to
14 ask you about the way that you understood your role as a
15 member of the MEC. As somebody elected out of Council 3, you
16 had the right did vote on things?

17 A. Yes.

18 Q. Just describe for us quickly what that right, what that
19 right to vote meant, and who within the MEC had that right?

20 A. There were six members of the MEC who had that right.
21 Although, at this, at the time of this meeting I believe
22 there was actually seven. There was a captain rep for each
23 domicile that had captains, first officer rep that had each
24 domicile that had first officers and there was a flight
25 engineer rep for the domicile that had flight engineers.

1 And Council 2 and Council 4 which was New York and
2 Los Angeles respectively did not have any flight engineers so
3 they did not have a flight engineer rep. In St. Louis we did
4 have one flight engineer whose main job was to ferry the
5 remaining 727s that TWA still had, and he was essentially
6 representing himself. So there were seven members of the MEC
7 who had a vote. There were also a couple of other secretary
8 treasurers who had been elected to positions and had the
9 right to attend MEC meetings, but they did not have a vote.

10 Q. And in terms of how you viewed your goal as a voting
11 member, describe for us the way in which you felt you should
12 be casting your vote when different issues came up?

13 A. I viewed my job, when I ran for office, to be as open
14 and as transparent as I possibly could about who I was. And
15 to try to ensure that people knew me as best as possible, as
16 a candidate. And once I was elected I considered my job to
17 be to evaluate the things that were in front of me, and make
18 a decision about what I would do.

19 And I didn't necessarily concern myself with trying
20 to figure out what somebody else was going to do. It was
21 hard enough at times to figure out what the right thing to do
22 for yourself was.

23 So I considered the MEC to be a representative body
24 analogous to the Congress, where we were elected to consider
25 the information that was available, and to make the best

1 decision we possibly could.

2 Q. Did you consider it your responsibility to talk to the
3 pilots in your council and find out how they would have voted
4 if they were in your seat, and allocate your votes
5 accordingly?

6 A. No. I did not -- you may be referring to the roll call
7 vote, and I was not a fan of the roll call vote. The roll
8 call enabled representatives to cast a vote that was
9 quantified by however many pilots were in their status that
10 they represented, so they there were in excess of 700 pilots
11 in the status that I represented, so when the roll call vote
12 was initiated, I could essentially cast in excess of 700
13 volts.

14 I didn't like it. I didn't believe that I was
15 capable really of establishing what other people would do. I
16 I didn't believe that I was capable nor was it my job to try
17 to figure out 40 percent would do this, 60 percent would do
18 something else.

19 Q. Did anybody ever criticize you for suggesting that your
20 role was to figure out how different pilots would want to
21 vote?

22 A. I don't recall that. No.

23 Q. We will come back to that. While we are on the topic,
24 can you tell us about the different kinds of votes. You
25 mentioned roll call vote. Were there other ways where issues

1 had to be voted on by the MEC that the vote was taken?

2 A. Normally a vote was taken where each representative had
3 one vote, and the majority ruled. At the election or the
4 request of any of the particular representatives, the roll
5 call could be implemented where then the roll call would be
6 used in and pilots would vote the number of votes on the
7 pilots and their status. Then it was majority rules again
8 although it was not necessarily the majority of the members.
9 But it was the majority of the votes cast.

10 Q. First type of vote, what was that referred to as where
11 people each just get a vote?

12 A. I guess when we talked about it, we talked about one
13 man, one vote. I don't recall a particular official name for
14 that. It was the standard voting methodology and the roll
15 call had to be asked for.

16 Q. Was it sometimes referred to as a voice vote?

17 A. Well, I don't think so. You could have a voice vote or
18 a hand vote, or I am not sure a voice vote, or one man one
19 vote matched up exactly.

20 Q. All right. During the period after the bankruptcy as
21 the MEC is getting organized, what effort, if any, did the
22 MEC or the local counsel make to educate the TWA pilots at
23 large about what was happening?

24 A. Well, there were a number of of emails sent out, an
25 email list, we communicated by email, and Council 3 we had a

1 code-a-phone as well as postings on a message board. At one
2 point there was a resolution directing the officers to
3 conduct road shows, and I frankly don't recall how that went
4 down, but there was ramp office visits that were made, where
5 we went to the ramp office to meet pilots as they came
6 through the base on their trips.

7 Q. Turn for a minute to D 7 which is not in yet in
8 evidence.

9 You you should have a copy in front of you, the
10 second document.

11 A. I do.

12 Q. Can you describe for us what D 7 is, please?

13 A. This is an information update in our local council, we
14 had a communications chairman whose primary responsibility
15 was to communicate with the members of the domicile. This
16 was typically puts on a code-a-phone where pilots could call
17 in and listen to it by voice. There was also posted on an
18 enclosed bulletin board in our pilots mail room, and it was
19 emailed to pilots as well.

20 Q. Now, you just?

21 MR. FRAM: Your Honor, I am going to move D 7 in
22 evidence, please.

23 MR. PRESS: No objection, your Honor.

24 THE COURT: D 7 in evidence.

25 Q. Let's walk through a couple aspects of it. It looks

1 like it says hello, this is Ron Tamaccio, Council 3
2 communications chairman. What were his responsibilities as
3 of January of 2001?

4 A. He was the chairman of our local council communications
5 committee.

6 Q. Okay. And what degree did the elect members of local
7 Council 3 communicate with him or interact with him to make
8 sure he had up-to-date information?

9 A. He would gather information from other chairman in the
10 local counsel, he would talk to me about what what was going
11 on.

12 I would give him information about what to
13 communicate. He would talk to chairman of MEC committees to
14 gather information about what was going on. He had a
15 collection of contacts that he would bring together, and put
16 into these information updates.

17 Q. You just mentioned the MEC committees. What were the
18 primary MEC committees that existed in January, '01 or that
19 came into existence?

20 A. The primary committees of interest to us at that time,
21 the merger committee, came in to interest, the negotiating
22 committee, the MEC had a communications committee which was
23 important, the MEC had a scenarios committee which was of
24 lesser importance since the acquisition had already begun.
25 Those I think are the primary committees.

1 Q. And it appears as though, it is like he is reading, it
2 says, "Hello, this is Ron Tamaccio."

3 Is this a printout of something that would have
4 been posted on the code-a-phone?

5 A. Yes.

6 Q. Let's turn to the second page. I see that in that
7 left-hand column, third paragraph down, it says for us, the
8 most important term of the asset purchase agreement is an
9 offer of employment by AAL to all of TWA's unionized
10 workers.

11 A. Can you aim me at it again?

12 Q. Turn to the second page of the document. Left column.
13 Third paragraph down.

14 A. Okay.

15 Q. For us?

16 A. Yes.

17 Q. The reference there to AAL was referring to what?

18 A. American Airlines.

19 Q. Did you agree with the sentiment expressed there with
20 respect to the most important term?

21 A. Yes.

22 Q. Then I see if you go to the right column at the very
23 bottom it refers to the scope, it says the scope the scope
24 clause in our current CBA will not apply to this current
25 transaction.

1 A. Yes.

2 Q. Next page, left column, third arrow. Issues of pilot
3 seniority will be negotiated between ALPA and the pilots
4 union at AAL. Those particular issues were once that were of
5 concern to you and the other pilots and in Council 3?

6 A. Absolutely.

7 Q. Just to move along quickly to D 243 which is in
8 evidence. There those are the minutes of an MEC meeting on
9 January 17 to 19 of 2001. I am not going to ask you about.
10 Of this but do you have that handy?

11 A. Yes.

12 Q. Turn to page 18?

13 THE COURT: What document is that?

14 MR. FRAM: D 243 in evidence.

15 Q. Turn to page 18. You talked a little bit before about
16 the process of roll call vote. And I see that at the top
17 that there was a resolution. If we go back to the prior
18 page, we can put it in context, resolution, 01-21 by W Cliff,
19 D Singer, amended by D Singer/slash S Rautenberg. Then the
20 resolution deals with the rights and privileges of the
21 nonstatus secretary treasurer?

22 A. Yes.

23 Q. And then you mentioned before that with respect to roll
24 call votes, your perspective is generally not to --

25 A. I didn't hear the question.

1 Q. I think you said before when it came to roll call votes
2 that your position, let's go back to page 18, you see the
3 tally of the roll call vote there?

4 A. Yes.

5 Q. It shows that you cast 724 votes in favor of the
6 resolution but none against?

7 A. Yes.

8 Q. And when roll call vote came up, on other occasions, was
9 that your practice to cast your votes as a whole?

10 A. That was my general practice. There was a couple of
11 exceptions.

12 Q. I see that some of the others, voting members, split
13 their votes. For example, looks like Mr. Singer cast 209 in
14 favor but one against?

15 A. Yes.

16 Q. And then it looks like Ms. Young cast 32 in favor and
17 and 600 against?

18 A. Yes.

19 Q. Did these other members explain when they split their
20 votes what their thinking was as a general matter?

21 A. No, there was no requirement for them to do that. I
22 don't recall it happening routinely and I really don't recall
23 it happening at all.

24 Q. Okay. All right. The next document in front of you the
25 next document in front of you is D 244 in evidence. I want

1 to ask you a couple of questions about this in terms of how
2 the MEC organized itself when it communities. I see that on
3 the top of page 9 that a resolution, 01-44, appears to have
4 been passed in executive session. Do you recall without me
5 showing you that resolution what it was?

6 A. No, I don't.

7 Q. So let's show it to you. In fact if you turn to the
8 next document in your pile it should be there. D 81.

9 A. No, I don't have that.

10 Q. I am going to give that to you in one second. I am just
11 using the second, third and fourth pages of it.

12 Do you recognize D 81 as a memo from Robert
13 Pastore, the master chairman, to MEC and LEC officers and
14 others dated 2/8/01 to which is attached a compilation of
15 actions from February 15 and 16 of 2001.

16 A. Yes.

17 Q. Okay. And the compilation action is what I want to
18 refer to quickly. Does that refresh your memory that
19 resolution 01-44 referred to in the minutes was a way in
20 which the MEC organized itself in terms of communications and
21 other things going forward?

22 THE WITNESS: Yes, it was.

23 Q. Pull up D 81, the third page.

24 THE COURT: Are you offering that?

25 MR. FRAM: Yes, I will offer that. I object D 81

1 in evidence.

2 THE COURT: Any objection?

3 MR. PRESS: No.

4 THE COURT: I will be in evidence. D 81. Go
5 ahead.

6 Q. It appears that a merger committee is formed, and
7 without reading through all the details at the top of the
8 next page, it then indicates indeed that direct access to
9 the merger committee chairman shall be afforded to the MEC
10 chairman and MEC officers. That would have included you,
11 yes.

12 A. Yes.

13 Q. Did you go forward and avail yourself of the right to
14 have direct access to the merger committee chairman?

15 A. I did not. Not that I can recall.

16 Q. Okay. Let's turn back to the first page of D 81. Which
17 is 2/8/01. 2/8/01, that memo says access -- second page.
18 That says access to the merger committee is limited to the
19 MEC officers, David Holtzman and our merger counsel Roland
20 Wilder. LEC officers and committee chairman who wish to
21 contact the merger committee may do so through merger
22 oversight chairman Scott Schwartz. Is that why you didn't
23 have direct access?

24 A. I may have misheard the question. I believe I had
25 access to the merger committee chairman. I did not, I did

1 not avail myself of that. I had plenty of contact with the
2 merger committee chairman through the briefings that we had
3 on a regular basis from the merger committee. And contact
4 with the merger committee was a highly sensitive issue. That
5 is why I think the memo was created, was to cut down on MEC
6 members just directly contacting the merger committee, and
7 the resolution was in the same vein, was to try to cut down
8 the ex- train just input to the merger committee what wasn't
9 guided by the entire MEC.

10 Q. Ask request you just explain this a little, why there
11 was a concern about too much contact with the merger
12 committee chairperson?

13 A. Well, I think the concern was that that individuals
14 might be pressing their own agenda and they might press their
15 own agenda in the absence of the other members of the MEC.
16 Now, that was the issue. And so the desire was to create a
17 situation where that was limited.

18 Q. What different agendas did you or others perceive there
19 were?

20 A. Oh, there is always a seniority agenda. You know, what
21 is the merger committee going to do, where is the merger
22 committee going to aim its efforts? Is it going to represent
23 the junior guy, the senior guy, who exactly is going to be
24 adequately represented by the merger committee.

25 Q. So were there disagreements among the TWA pilots about

1 whether particular seniority integration was good or bad?

2 A. I am sorry. I again, I am having difficult hearing you.

3 Q. Were there disagreements among the TWA pilots as early
4 as February and March of 2001 about whether a particular
5 seniority integration was good or bad?

6 A. I am sure there was. The general, my general sense of
7 the situation is that pilots had wildly optimistic
8 expectations about what the seniority integration was going
9 to turn out to be.

10 Q. We will come back to that. Just to go back to the
11 minutes of February 15, 16, for a moment. Going back to page
12 10.

13 THE COURT: Which document is that?

14 MR. FRAM: Your Honor, we are back to D 244 in in
15 evidence.

16 THE COURT: 243 or 244.

17 MR. FRAM: 44, your Honor.

18 Q. If we look at, it looks like the second paragraph down,
19 bee row nine 47, Hollander defendant. Pastore stated merger
20 oversight committee had been established to support the
21 merger committee. Schwartz was assigned to make sure everyone
22 was in the loop. Schwartz stated that a conference call was
23 scheduled every Wednesday with all those supporting the
24 merger committee included on the call. Do you recall that?
25 Pastore stated that a merger oversight committee had been

1 established to support the merger committee?

2 A. I am not with you on the document. I remember the
3 establishment of a merger oversight committee, yes.

4 Q. How about the scheduling of a conference call every
5 Wednesday?

6 A. That was a call that MEC members were not on.

7 MR. FRAM: Your Honor, I am going to move into some
8 detail at this point. I see it is two o'clock. Shall I
9 continue or would you like to break?

10 THE COURT: No. I think we will stick to our
11 schedule and resume tomorrow morning at 8:30, maybe even 25
12 after eight like we did today.

13 Ladies and gentlemen, let me continue to thank you
14 for your attention, for your participation. And don't
15 discuss the case among yourselves. Keep an open mind. Do
16 not discuss the case with family, friends or loved ones.
17 Keep an open mind until you have heard all of the evidence.
18 Have a safe trip home and a safe trip in tomorrow morning.
19 That is what is really important. I will see you tomorrow
20 morning at 8:30.

21 (The jury leaves the courtroom.)

22 THE COURT: Everyone please be seated. You can
23 step down.

24 (Witness excused.)

25 THE COURT: I note that there were two homework

1 assignments outstanding. One is for the plaintiff to tell me
2 when, what the timeframe they want for the response brief to
3 the Rule 50 motion that was filed last night, actually, and
4 then Katz's application to strike parts of the exhibit,
5 rather than the come pills, 148.

6 MR. KATZ: Yes, your Honor.

7 THE COURT: To strike certain parts of that
8 compilation. So you have those two homework assignments

9 MR. KATZ: Your Honor, there is one issue that is
10 still pending before the Court. I would like to remind you
11 of.

12 THE COURT: Remind me? Okay. Remind me.

13 MR. KATZ: Bill Compton's video.

14 THE COURT: Yes.

15 AMR. KATZ: We gave you and opposing counsel a
16 transcript of the portions of the Senate testimony on
17 February -- in February, 2001, of Mr. Compton that we wish to
18 show as part of ALPA's case. I am not sure whether we are --

19 THE COURT: What is the plaintiff's position? They
20 want none of it.

21 MR. PRESS: That's right. It has no relevance to
22 the issues.

23 MR. JACOBSON: It has all these evidentiary flaws.

24 MR. PRESS: Hearsay, inadmissible opinion
25 testimony, what not, lack of foundation.

1 MR. JACOBSON: Not the product of cross examination,
2 not subject to cross examination.

3 THE COURT: Something was stipulated. In that
4 series of emails. Do we know what it was that was
5 stipulated.

6 MR. PRESS: I don't want to make a representation
7 without reading it which I haven't done.

8 MS. RODRIGUEZ: Again, my sense of what was
9 stipulated to and again it is not, the documents --

10 THE COURT: You went ahead, they did not take the
11 deposition.

12 MS. RODRIGUEZ: The issue, as I recall it, was that
13 there was a representation made that this is the area that he
14 will testify to, not to exceed what he has testified to at
15 Congress, and we reserved our right to all objections that we
16 would have to any testimony that they intended to put on. So
17 you know, it was not, it wasn't our deposition. We just
18 wanted to know if he is going to testify, what is he going to
19 testify to. No surprises, it is all the stuff that was
20 before Congress.

21 A. So we didn't need to take his deposition but we weren't
22 stipulating to the --

23 THE COURT: Well, I did read some of that stuff
24 that he testified at Congress. It is hard for me to say that
25 you wouldn't want a deposition on something. Speaking to

1 Congress is not like giving a deposition.

2 MS. RODRIGUEZ: But we reserved our right to object
3 to any portions of the transcript. Quite frankly, it was --

4 THE COURT: Oliver North took Arthur Lyman to the
5 cleaners when he testified before Congress. Lyman was
6 questioning him, took him to the cleaners. I don't, Lyman
7 didn't even know where he was. And testifying before a
8 Senate is a lot different than taking a deposition with rules
9 and --

10 MS. RODRIGUEZ: For purposes of discovery, what he
11 is being offered for, but the stipulation, the document that
12 Mr. Katz presented to you makes clear that we reserved our
13 right to object, reserved all objection to say that
14 testimony.

15 MR. KATZ: Your Honor, I saw it a little
16 differently than what Ms. Rodriguez has described. Let me
17 just briefly outline what I remember. And that is that the
18 plaintiffs actually were the ones who noticed the deposition
19 of Bill Compton, and --

20 THE COURT: Yeah, they were the ones, that I got
21 from the exchange because they were the ones that were in
22 effect giving up their right to depose him.

23 MR. KATZ: Correct. In response to their noticing
24 the deposition of Mr. Compton I said, in this exchange with
25 lawyers for the plaintiffs, that we would limit what we

1 relied on in our summary judgment motion and in trial
2 to Mr. Compton's testimony in the bankruptcy court and in the
3 Senate in February, 2001.

4 THE COURT: He testified in the bankruptcy court.
5 Then you would have at least more controlled testimony. I
6 haven't read it. But by its very nature it would be subject
7 the rules of evidence, and cross examination. It would look
8 a lot more like testimony given here in a courtroom. I mean
9 in a District Court. You can't say it is the same as a
10 testimony before a Senate committee.

11 MR. PRESS: It was a sales pitch, Judge.

12 THE COURT: No question about that. He wanted them
13 to approve the disappearance of another American airlines. I
14 say American, I mean an airline, a domestic airline. And he
15 wanted to convince them they should back it. That is
16 transparent. It doesn't take a genius to figure that out.

17 MR. KATZ: What I offered, your Honor, in the email,
18 and in discussions with counsel for the plaintiffs, was that
19 we would limit our evidence from Mr. Compton to those two
20 pieces of evidence, the bankruptcy core testimony, the
21 Congressional testimony, if --

22 THE COURT: But you put it it as a limitation, not
23 much of a limitation. Especially if the Senate.

24 MR. KATZ: The alternative is we get an affidavit
25 or we call him at trial.

1 THE COURT: This is the same thing with Brundage,
2 and with the other one.

3 MR. KATZ: Randy Babbitt.

4 THE COURT: Randy Babbitt, where I have, you
5 instead of putting on your witness, you know, carefully
6 putting what you are going to prove, how you are going to
7 cross examine, and getting those two cases, you get a
8 discovery deposition, they are wild questions but in a
9 discovery deposition they are okay. You get a person to
10 babble on.

11 It becomes admissible by the party whose weakness
12 it really is. Here I have the same thing. I have a salesman
13 getting on. The question what the financial future of the
14 company is a highly complex issue. And I have no doubt that
15 he is competent to testify as a witness. I think as the CEO
16 of the company he can testify to that or in that area. But
17 that is a lot different than just giving, you know, an
18 open-ended statement, you know, to Congress.

19 MR. KATZ: Your Honor, what we were dropping was
20 our ability to call him as a live witness at trial or dismiss
21 the affidavit --

22 THE COURT: Why is this better than calling him as
23 a live witness?

24 MR. KATZ: We thought it was better. The exchange
25 was --

1 THE COURT: No, that much I see.

2 MR. KATZ: The exchange was that they would agree
3 that either he would be, they would stipulate that either he
4 would testify the same as he had in Congress in court, or the
5 testimony was admissible subject only to the question of
6 relevance.

7 THE COURT: I could think of all kinds of cross
8 examination that the chief CEO of TWA concerning the
9 financial condition of the company, not that I have any doubt
10 that it was a bad financial condition. At some level that is
11 true.

12 But to say that a company is in bad condition,
13 there is bad condition and there is bad condition and there
14 is bad condition. I mean, you know. He is subject to cross
15 examination. He asked about gate rights they had, the get
16 rights they had previously, of course. Maybe you could ask
17 about the high skill level of the pilot force. They had a
18 very senior pilot force. Skilled pilots capable of flying
19 the big aircraft. But he just gives a sales pitch to the
20 Senate.

21 MR. KATZ: He had some very hard facts in there,
22 your Honor, like the fact that the day they filed for
23 bankruptcy they didn't have enough cash to operate the next
24 day. Like the fact that he went to all the other major
25 airlines --

1 THE COURT: But even that, even that, that is a
2 hard fact. But believe you me, I watched good bankruptcy
3 lawyers operate in cross examination and I guarantee you that
4 that statement, we could be subject to two hours of cross
5 examination alone.

6 I had a hot shot bankruptcy lawyer who was fully
7 up-to-date on, what all the financials were, had before him,
8 what does the jury hear? Well, man, he says we only had
9 money for, you know, what that really means and do I think
10 this if they operated another day they were going to close up
11 shop.

12 The answer is no, of course not. They had the
13 right to file Chapter 11, it stops them from closing up. And
14 order number 1 in the Chapter 11 is to is to give them
15 authority to continue to operate and only have to pay new
16 debts, they don't have any of the old debts, at least for the
17 moment. That is how they keep operating. And had the built
18 to get financing which would be, I am using a term I like to
19 use when I was practicing, proof of priority.

20 MR. JACOBSON: Administrative expense, your Honor.

21 THE COURT: What?

22 MR. JACOBSON: It is called administrative
23 expense.

24 THE COURT: I know it is administrative expense,
25 but you can get even among administrative expenses you can

1 get a super priority, even above the administrator expense.

2 MR. JACOBSON: Sort of like a purchase money order
3 lean.

4 THE COURT: I guess. Not quite accurate. So I
5 don't know. There is all kinds of things. But what I am, in
6 the series of emails, it says something is stipulated to. I
7 don't know what is stipulated to.

8 MS. RODRIGUEZ: Let me add one more level, your
9 Honor. When the discussions were being had, there was no
10 videotape. The videotape came, timeframe wise, within the
11 last couple of months.

12 THE COURT: The transcript was available.

13 MS. RODRIGUEZ: We were talking about the
14 transcript, C Span. But that, and the stipulation, whatever
15 it is, it is certainly unclear, but what is clear is that the
16 plaintiffs maintain their right to all objections to the
17 testimony. If Mr. Katz can point --

18 THE COURT: We won't take the deposition, you can
19 use this, but we reserve all our objections now you come and
20 tell me I object to all of them. That is a hell of a
21 stipulation.

22 MR. JACOBSON: The stipulation, this is a
23 stipulation that this testimony is not going to go outside
24 the bounds of what he said in the bankruptcy court and did
25 what I had I said in the Senate.

1 THE COURT: What he stated to the Senate is from
2 the defendant's point of view, it is kind of a very favorable
3 bombshell. I mean to the extent that, you know, the jury
4 believes that this is a company that was ten minutes, you
5 know, they are shutting down operations, actions of one kind
6 by ALPA can be put in one light, you know, it always, one's
7 perception with the financial condition of TWA and its worth
8 to American, they paid a lot lot of money for it, when I say
9 a lot, who knows in the context, but they pay hundreds of
10 millions of dollars, according to some examination if you
11 include the assumption of debt they paid billions of
12 dollars,

13 So it is real important stuff. From his point of
14 view, not from your point of view.

15 MS. RODRIGUEZ: And certainly not, it was at a time
16 in the proceedings when the defendants were complaining about
17 all the depositions that we were taking and it was an attempt
18 to limit the scope of Mr. Compton's --

19 THE COURT: You cared that they complained?

20 MS. RODRIGUEZ: They were complaining to you, your
21 Honor.

22 THE COURT: No, I didn't stop, when did I ever stop
23 a deposition?

24 MS. RODRIGUEZ: Not a deposition.

25 THE COURT: I never once stopped a deposition of

1 anybody.

2 In fact, I allowed depositions even after the final
3 pretrial order when I thought there were witnesses that might
4 have something to say. Don't hang that one on me. I
5 probably made lots of mistakes, but one of them is not
6 blocking discovery. I am a big believer, if there is a
7 witness who knows something, even if it comes later, hell,
8 when I was trying cases I would take depositions during the
9 course of the trial in the evening.

10 MR. PRESS: Mr. Katz and I were looking for ways to
11 streamline discovery. We had a stipulation on Steve
12 Rautenberg that he wouldn't testify. We made the stipulation
13 on Compton that is highly favorable to us. He will not be in
14 that chair and the only thing they will offer is his
15 transcript, but we reserve our objections to it.

16 THE COURT: It is illusory. If the stipulation is
17 that --

18 MR. PRESS: No, it is not. You have the right to
19 rule on our objections.

20 THE COURT: But your objection is the whole thing.

21 MR. PRESS: That is true.

22 THE COURT: It is not like you take a line here and
23 there or a page here and a page there and I read it. When
24 there is left, there is something there. You haven't taken
25 a line by line approach to say this section is okay, this is

1 not. You you said it is all -- what.

2 MR. PRESS: Your Honor.

3 THE COURT: What kind of a stipulation is that?

4 MR. PRESS: That is, the whole stands of what it is
5 we will be arguing about, if we argue it in court which we
6 are doing now.

7 But your Honor, this issue came up with Sherry
8 Cooper, the board member. And I thought --

9 THE COURT: I had a different problem with Sherry
10 Cooper. Sherry Cooper, she was the labor representative, she
11 was a labor representative, she was the flight attendants
12 representative, I think. Flight attendants union
13 representative on the board.

14 MR. JACOBSON: That's right, your Honor.

15 THE COURT: Basically what she said, I can
16 negotiate savings with lots of unions, she gave some
17 confusing and highly generalized statments about outside
18 investors, and there was not a slightest bit of indication
19 that any of that was lined of up or we had the slightest idea
20 of what the connection was.

21 This is a guy who is the CEO of the company. I
22 think by definition --

23 MR. PRESS: You also made the point, Judge, her
24 testimony doesn't go to whether or not the union breached its
25 duty of fair representation.

1 THE COURT: That's right.

2 MR. PRESS: We talked about this afterwards. We
3 ended up, we agree with you. It isn't relevant to that. And
4 neither is the opposite position from the same coin. It
5 doesn't prove that ALPA didn't violate, whether or not TWA
6 was going out of business the next day or the next month or
7 the next year has nothing to do with --

8 THE COURT: But you had a lot of testimony about
9 various strategies that were, with Wilder at various points
10 and other people, were suggested, and cross examination by
11 Mr. Jacobson, he went through a litany of what unions might
12 do to put pressure on mostly the management, but might use to
13 put pressure on somebody. Say this case is different because
14 you went pressure by pressure, but, it is the union, not
15 management.

16 MR. JACOBSON: Mr. Woerth was allowed to testify
17 about his impressions about the financial position of TWA.
18 He is the person whose mental state is important here, if
19 anyone's mental state is important. So the evidence to the
20 extent that it is relevant is in. To bring in a video of
21 something trying to do a sales job on the Senate who is not
22 the decision maker on how hard the union is going to fight,
23 you indicated so many things come in because they go to state
24 of mind of the participants. Mr. Compton wasn't a
25 participant.

1 THE COURT: I have to think, if I was just offered
2 this disk of Compton's testimony before the Senate, I would
3 even consider it, even for a second, he is testifying on what
4 I consider a highly technical subject. He is not subject to
5 cross examination.

6 MR. KATZ: He was under oath.

7 THE COURT: But he is not subject to cross
8 examination. Also it was not an adjudicatory proceeding in
9 the real sense of the word. It wasn't in the context of a
10 deposition or the context of a bankruptcy court. I find it
11 hard to imagine that I would, even consider it briefly
12 letting it in, and had the potential to say, well, this
13 company is such a wreck, such a wreck from Georgia Tech, that
14 I am, you know, ALPA was smart to do nothing that could even
15 slightly risk tipping the balance, and tipping American
16 Airlines had to go through with it. On the other hand. One
17 of the value of assets is a fairly complicated question.
18 Especially this case is changed radically by events that had
19 nothing to do with the parties. Probable the value of the
20 deal was changed radically on September 11. 9-11 to deal
21 with was a lot different than it looked in January.

22 MR. JACOBSON: 9-11 they received a substantial sum
23 of money from the government.

24 THE COURT: When 9-11 happened it wasn't just the
25 money. I know they had, it was billions of dollars, the

1 airline industry took a banging.

2 MR. JACOBSON: That is true.

3 THE COURT: American Airlines would have still
4 collected a lot of their business without even purchasing
5 TWA. That is neither here nor there. It is a fairly
6 complicated question and yet here I have a, I have some kind
7 thing which resulted in the CEO of TWA's deposition not being
8 taken.

9 MS. RODRIGUEZ: But we are the ones.

10 THE COURT: You took dozens and dozens --

11 MS. RODRIGUEZ: It was our decision not to, talk
12 about an illusory stipulation. If you give their --

13 THE COURT: But he has, as you know from the two
14 depositions you took of Brundage and what other one?

15 MS. RODRIGUEZ: Babbitt.

16 THE COURT: You took one of them, you took the
17 other one. In one of them plaintiff -- the defendants
18 questioned at all, I don't think it was a simple question.

19 MR. KATZ: We didn't ask Mr. Babbitt any questions.

20 THE COURT: Brundage there was some questions.
21 There was some.

22 MR. KATZ: A few.

23 THE COURT: In either case, I take Babbitt, if I
24 were in Mr. Katz's position I would have confidence and even
25 under the laser like questioning we will see from the

1 plaintiff, he put himself in a way that was favorable to the
2 defendants. The defendants would perceive as favorable to
3 them. So that doesn't, to say you were the one taking the
4 deposition --

5 MS. RODRIGUEZ: But the defendants didn't, they
6 didn't change the -- they didn't seek to take his deposition.
7 It wasn't --

8 THE COURT: But there is this reference in this
9 correspondence to this testimony before the Senate. It is
10 not like something that came up later on.

11 MS. RODRIGUEZ: Ho, but why would we waive our
12 right to take a deposition to allow them to put something
13 that is wholly unobjectionable into the record?

14 THE COURT: Maybe you thought it was a form of
15 limitation on what he could could say.

16 MR. KATZ: Precisely.

17 MS. RODRIGUEZ: No.

18 MR. PRESS: We reserved our evidentiary objections
19 in this trial. We did it, to be completely unfair --

20 MR. KATZ: Not so.

21 THE COURT: The emails are here. Let me just take
22 a second.

23 (Off the record discussion.

24 THE COURT: I am never going to forget Babbitt's
25 name again. He is too important a man. Maybe he can

1 reactivate my students pilots license.

2 MS. RODRIGUEZ: Do you have an extra copy?

3 MR. KATZ: No, one copy. I gave out copies the
4 other day.

5 MS. RODRIGUEZ: They are in my car.

6 THE COURT: The first email in date is October 13.
7 I think it is from Mr. Katz to Nicole Acchione.

8 MR. KATZ: There is one below that. From Nicole to
9 me. She says can you clarify what your proposed stipulation.

10 THE COURT: I want to know the date.

11 MR. KATZ: No date on that one. It was probably
12 the same date, October 13. I was responding.

13 THE COURT: I don't see a date on it. Can you
14 clarify what your proposed stipulation concerning Compton
15 will be? Are you agreeing not to call him at trial or just
16 to rely on his prior testimony? I don't know what she means
17 by testimony. Or are you agreeing that he can be brought to
18 trial but his trial testimony will be limited to the subject
19 areas covered in his earlier testimony.

20 MR. KATZ: I think the same day I responded to the
21 one above that.

22 THE COURT: You respond. Nicole, the concept is
23 that we'll agree to dispense with the deposition of Bill
24 Compton and ALPA will stipulate that we will rely on his
25 prior testimony before Congress and the bankruptcy court. I

1 don't know, you haven't offered that, I don't think.

2 MR. KATZ: No, it is similar to what he said in
3 Congress.

4 THE COURT: Given what the bankruptcy Judge
5 decided, it probably was. Instead of calling him as a
6 witness at trial, using his declaration to support our
7 dispositive motion. We could stipulate that he would say
8 what he said before or we could stipulate that is is his
9 prior testimony is admissible subject to any objections
10 plaintiffs might assert as to relevance.

11 MR. KATZ: That is the only one.

12 THE COURT: As to relevance.

13 MR. KATZ: That is the only one.

14 THE COURT: Either of these approaches works for
15 me.

16 Then Ms. Rodriguez comes back, I think, Dan, I
17 tried to reach you today by telephone.

18 MR. KATZ: This is October 23, your Honor.

19 THE COURT: 5:15:08. Dan, I tried to reach you by
20 telephone today. We will agree to the stipulation you
21 proposed concerning the use of transcripts rather than
22 calling Compton to testify at trial. In light of the
23 stipulation we will not proceed with Compton's deposition on
24 Monday. We are still waiting to hear back from you, however,
25 concerning -- I don't know what this is about.

1 MR. KATZ: The March 15 letter is a letter that
2 Compton wrote to TWA employees and that Nicole had wanted us
3 to agree to the admissibility of that letter. And I got --

4 THE COURT: Is that letter in evidence?

5 MR. KATZ: No, I did not agree to it and it is not
6 in evidence.

7 THE COURT: He might offer it.

8 MR. KATZ: It has not been offered and we did not
9 stipulate to its admissibility. The voice mail that Lisa,
10 Ms. Rodriguez left me, was pretty much like her email.
11 Saying she agreed to the proposed stipulation that I had sent
12 on October 13.

13 THE COURT: I can understand reserving the
14 objections to relevance because in a sense that is almost
15 always, almost automatically reserved. Evidence is not
16 admissible if it is not relevant.

17 MR. KATZ: It would be presumptuous of us to insist
18 that the Court allow it and we didn't insist on that. We
19 said they could preserve their objection.

20 THE COURT: But it is not preserved, not preserved
21 on hearsay, on authenticity.

22 MR. KATZ: That's correct. That was the deal I
23 offered and that is what Ms. Rodriguez accepted in her voice
24 mail and in her email reply.

25 THE COURT: What sayeth thou?

1 MR. PRESS: Is there more to that chain?

2 THE COURT: What?

3 MR. PRESS: Is there more correspondence on that
4 issue?

5 THE COURT: That is what I have. If you want to
6 show me more. That is all I have. Both sides gave me.

7 MR. KATZ: That is what I distributed the other
8 day.

9 MS. RODRIGUEZ: We didn't give you anything.

10 THE COURT: I am not limiting you.

11 MR. PRESS: I don't have anything on me.

12 THE COURT: Hang you by your heels and see what
13 comes out.

14 MR. PRESS: On the stip as it exists on the record
15 now it shouldn't come in. This is not relevant to any of the
16 issues raised in this courtroom.

17 MS. RODRIGUEZ: There is another page.

18 MR. PRESS: You talked about, Judge, that people's
19 perceptions of TWA's financial position could be relevant but
20 this plan is testifying to supposed fact.

21 THE COURT: But I am troubled when you make a
22 stipulation, a deposition is cancelled, and I am asserting
23 the right to say I object to all of it.

24 MR. PRESS: Mr. Katz is the one that suggested the
25 relevance objection be preserved.

1 MS. RODRIGUEZ: Do you have another page? I
2 thought Mr. Katz handed up two pieces of paper.

3 THE COURT: My second page has nothing on it.

4 MR. KATZ: There is a third page. This is the next
5 day, there is an email.

6 THE COURT: From you.

7 MR. KATZ: From me to Ms. Rodriguez, and the
8 lawyers for the plaintiffs. With copies to the lawyers for
9 American Airlines.

10 THE COURT: All he says is I agree to the
11 stipulations but opens the question as to what the
12 stipulation is.

13 MR. KATZ: I do not agree to the admissibility of
14 the Compton letter, that is the May 15 letter.

15 MS. RODRIGUEZ: We would permit plaintiffs to
16 retain their potential objections to Compton's sworn
17 testimony.

18 MR. KATZ: The relevance objections I mentioned in
19 the --

20 THE COURT: Mail the day before. On the 13th.

21 MS. RODRIGUEZ: I can go back and see whatever
22 emails re we retained on that.

23 THE COURT: All right.

24 MR. KATZ: Let me make a situation. We have had an
25 informative discussion about the Court's views on this. I

1 think everybody --

2 THE COURT: You know, you don't know what my views
3 are. My views are if this had just come up, if somebody
4 showed up at trial and said I want to put this in evidence,
5 we don't have to worry about relevance grounds, some of it
6 may be relevant but it would just be blatant hearsay
7 testimony, sales pitch at a Congressional hearing, it is not
8 evidence. Maybe in his deposition, maybe the sworn testimony
9 of bankruptcy, maybe personally. But when I see the
10 stipulation and I see a deposition was not taken --

11 MR. KATZ: My suggestion is going to be that
12 everybody return to their neutral corners, consider their
13 position and we reconvene and discussion it again at a later
14 date.

15 THE COURT: All right. I will reserve on it. You
16 folks want to talk about it.

17 MR. KATZ: Thank you.

18 THE COURT: Where is Compton now?

19 MR. KATZ: He lives in Florida.

20 THE COURT: You want to take a trip there to depose
21 him?

22 MR. KATZ: Will we be permitted to discuss that
23 with our co-counsel?

24 THE COURT: You are the one who wants to introduce
25 him. They didn't offer Compton.

1 MR. KATZ: We offered his Senate testimony. If you
2 are suggesting that the Court would permit a deposition, we
3 would --

4 THE COURT: I can't say, I don't really know what
5 he is going to testify to. But I can't say that he doesn't
6 have relevant testimony. Even though he wasn't essential, he
7 wasn't really a party to the dispute.

8 But if you really think he has something that is
9 relevant in the sense that I would understand, go down and
10 take his deposition, and maybe you can do it over some kind
11 of telephone, video hook up. You don't even have to go down
12 there, it can be done through Kinko's or some sort of service
13 so you didn't have to physically go.

14 MR. KATZ: We would appreciate the opportunity to
15 consider that option, your Honor.

16 THE COURT: But right now, although I say this
17 stipulation troubles me. I don't care what anybody says. It
18 troubles me. I say the stipulation. The nature of what he
19 is about to say has troubled me, there may be more. And so I
20 am being offered two very bad alternatives. One is to ignore
21 a stipulation made by attorneys. In good faith.

22 MR. PRESS: On the stip, the stip was proposed by
23 the defendant. All we said was we agreed.

24 THE COURT: Those are the words that count. It is
25 like proposing, like the good faith integration of the

1 pilots. The ALPA proposed it, you know, and they hired a
2 professor who spent two months preparing it. But until APA
3 said I agree, it was a piece of paper. And it turned out at
4 least the testimony I heard so far remained a piece of paper.

5 MR. PRESS: And the video.

6 THE COURT: I say a piece of paper. Probably 60 or
7 70 pages. The key words are I agree.

8 You don't know how many people have gotten in
9 trouble by saying those words.

10 Right now my inclination is not to let this in. I
11 think it is a sales pitch to Congress. It it is not evidence
12 of a financial condition but I am not ready to rule that his
13 testimony about the financial condition an and what he
14 conveyed to various people about it is not relevant. That
15 might be relevant. But in a situation where you can cross
16 examine, you can, you will know what you have to face.
17 Rebuttal. Something. For instance, maybe he will say
18 something which will wind up opening up Ms. Cooper's
19 testimony. You don't know. On rebuttal. Could be. But I
20 am not inclined right now, notwithstanding the so-called
21 stipulation, to let Compton's sales pitch in, do what you
22 will. Anything else?

23 MR. PRESS: Yes. We would like to know the order
24 the witnesses from the defendant.

25 THE COURT: You can ask your next witness.

1 MR. FRAM: Your Honor, it will be Mr. Holtzman.

2 THE COURT: Who?

3 MR. FRAM: Mr. Holtzman. Probably Mr. Singer.

4 Depending upon we might call Mr. Singer tomorrow.

5 THE COURT: It is just a question of which is
6 which.

7 MR. FRAM: I need to make a phone call and I will
8 be happy to make that call to let Mr. Press know.

9 MR. PRESS: The next two witnesses are Dave Singer
10 and David Holtzman.

11 MR. FRAM: Yes.

12 MS. RODRIGUEZ: Somebody may not be available. You
13 said you would make a phone call. If somebody is not
14 available is there somebody else.

15 MR. FRAM: It is one or the other, Singer or
16 Holtzman, one or the other. I need to check with Mr. Singer.

17 THE COURT: All right.

18 MR. PRESS: I am satisfied.

19 THE COURT: All right. Thank you all very much.

20 (Adjourned at 2:45 p.m.)

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I N D E X.

DUANE WOERTH, RESUMES.

CROSS EXAMINATION P. 3.

REDIRECT EXAMINATION P. 155.

RECROSS EXAMINATION P. 173.

STEVEN PAUL RAUTENBERG, SWORN.

DIRECT EXAMINATION P. 182